

EXHIBIT 71

1 MATT McGRANER - 10/11/2022

2 IN THE UNITED STATES BANKRUPTCY COURT
3 FOR THE NORTHERN DISTRICT OF TEXAS
4 DALLAS DIVISION

5 _____)
6 IN RE:) CHAPTER 11
7)
8 HIGHLAND CAPITAL) CASE NO.
9 MANAGEMENT, L.P.,)
10) 19-34054-SGJ11
11 Reorganized Debtor.)
12 _____)

13 REMOTE 30(b)(6) VIDEOTAPED DEPOSITION OF
14 HCRE PARTNERS, LLC
15 THROUGH MATT McGRANER
16 Tuesday, October 11, 2022

17
18
19
20
21 Reported by:

22 KIM A. McCANN, RMR, CRR, CSR

23 JOB NO. 217519
24
25

<p>1 MATT McGRANER - 10/11/2022</p> <p>2</p> <p>3 October 11, 2022</p> <p>4 9:28 a.m.</p> <p>5</p> <p>6 Remote Videotaped Deposition of MATT</p> <p>7 McGRANER, held via Zoom Videoconference, pursuant</p> <p>8 to the Federal Rules of Civil Procedure before</p> <p>9 Kim A. McCann, Registered Merit Reporter,</p> <p>10 Certified Realtime Reporter and Certified</p> <p>11 Shorthand Reporter in and for the State of Texas.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 2</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 R E M O T E A P P E A R A N C E S:</p> <p>3 APPEARING FOR THE REORGANIZED DEBTOR/PLAINTIFF:</p> <p>4 John Morris, Esq.</p> <p>5 PACHULSKI STANG ZIEHL & JONES</p> <p>6 780 Third Avenue</p> <p>7 New York, New York 10017</p> <p>8</p> <p>9 APPEARING FOR NEXPOINT REAL ESTATE PARTNERS</p> <p>10 AND THE WITNESS:</p> <p>11</p> <p>12 Charles Gameros Jr., Esq.</p> <p>13 HOGE & GAMEROS</p> <p>14 6116 North Central Expressway</p> <p>15 Dallas, Texas 75206</p> <p>16</p> <p>17 Also Present:</p> <p>18</p> <p>19 Deborah Newman, Esq., Quinn Emanuel</p> <p>20 La Asia Cantey - Pachulski Stang Ziehl & Jones</p> <p>21 LLP</p> <p>22 Philip Rizzuti, Videographer</p> <p>23 Lisa Lambert, US Trustees Office</p> <p>24</p> <p>25</p>
<p>1 MATT McGRANER - 10/11/2022</p> <p>2 I N D E X</p> <p>3 PAGE</p> <p>4 Examination by Mr. Morris 7</p> <p>5</p> <p>6 E X H I B I T S</p> <p>7</p> <p>8 NUMBER DESCRIPTION PAGE</p> <p>9 Exhibit 1A 30(b)(6) Notice of HCRE Partners, 15</p> <p>10 LLC</p> <p>11 Exhibit 2 SE Multifamily Holdings, LLC 98</p> <p>12 Limited Liability Company</p> <p>13 Agreement dated 8/23/18</p> <p>14</p> <p>15 Exhibit 4 Email dated 2/28/19 114</p> <p>16</p> <p>17 Exhibit 5 Email dated 2/28/19 117</p> <p>18</p> <p>19 Exhibit 6 Email dated 3/14/19 131</p> <p>20</p> <p>21 Exhibit 7 Email dated 3/15/19 145</p> <p>22</p> <p>23 Exhibit 8 Email dated 3/15/19 146</p> <p>24</p> <p>25 Exhibit 9 SE Multifamily Holdings, LLC 159</p> <p>First Amended and Restated</p> <p>Limited Liability Company</p> <p>Agreement dated 8/23/18</p> <p>Exhibit 10 Email dated 11/19/20 174</p> <p>Exhibit 11 Email dated 6/19/21 189</p> <p>Exhibit 17 Email dated 9/13/21 212</p> <p>Exhibit 20 Proof of Claim 41</p> <p>24</p> <p>25</p>	<p>Page 4</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 P R O C E E D I N G S</p> <p>3 THE VIDEOGRAPHER: Good morning,</p> <p>4 Counsel. My name is Phil Rizzuti. I am a</p> <p>5 legal videographer in association with TSG</p> <p>6 Reporting, Inc. Because this is a remote</p> <p>7 deposition, I will not be in the same room</p> <p>8 with the witness. Instead, I will record</p> <p>9 this videotaped deposition remotely. The</p> <p>10 reporter, Kim McCann, also will not be in</p> <p>11 the same room and will swear the witness</p> <p>12 remotely.</p> <p>13 Do all parties stipulate to the</p> <p>14 validity of this video recording and remote</p> <p>15 swearing, and that it will be admissible in</p> <p>16 the courtroom as if it had been taken</p> <p>17 following Rule 30 of the Federal Rules of</p> <p>18 Civil Procedure and the State's rules where</p> <p>19 this case is pending?</p> <p>20 MR. MORRIS: John Morris for</p> <p>21 Pachulski Stang Ziehl & Jones on behalf of</p> <p>22 Highland Capital Management, L.P. We</p> <p>23 consent.</p> <p>24 MR. GAMEROS: Bill Gameros of Hogan</p> <p>25 Gameros on behalf of NexPoint Real Estate</p>
	<p>Page 5</p>

<p>Page 6</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Partners, LP. We also consent.</p> <p>3 THE VIDEOGRAPHER: Thank you. This</p> <p>4 is the start of media labeled Number 1 of</p> <p>5 the video-recorded deposition of</p> <p>6 Mr. Matt McGraner in the matter of Highland</p> <p>7 Capital Management -- In re: Highland</p> <p>8 Capital Management, L.P. in the</p> <p>9 United States Bankruptcy Court for the</p> <p>10 Northern District of Texas, Dallas</p> <p>11 Division, Case Number 19-34054-SGJ 11.</p> <p>12 This deposition is being held on</p> <p>13 October 11, 2022, at approximately</p> <p>14 9:31 a.m. My name is Phil Rizzuti. I am</p> <p>15 the legal video specialist from</p> <p>16 TSG Reporting, Inc. The court reporter is</p> <p>17 Kim McCann in association with</p> <p>18 TSG Reporting.</p> <p>19 Counsel's appearances have already</p> <p>20 been noted on the record by the court</p> <p>21 reporter. Will the court reporter please</p> <p>22 swear in the witness.</p> <p>23 MATT McGRANER,</p> <p>24 Having been first duly sworn, testified as</p> <p>25 follows:</p>	<p>Page 7</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 EXAMINATION</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Good morning, Mr. McGraner. Can you</p> <p>5 hear me?</p> <p>6 A. I can. Good morning.</p> <p>7 Q. Okay. My name is John Morris. I'm</p> <p>8 an attorney at Pachulski Stang Ziehl & Jones. We</p> <p>9 represent Highland Capital Management, L.P.</p> <p>10 Do you understand that?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And do you understand that we're here</p> <p>13 for your deposition today?</p> <p>14 A. I do.</p> <p>15 Q. Do you understand that we're -- I'm</p> <p>16 going to be asking questions in both your</p> <p>17 individual capacity and in your capacity as</p> <p>18 HCRE's corporate representative?</p> <p>19 A. I do.</p> <p>20 Q. Have you ever been deposed before,</p> <p>21 sir?</p> <p>22 A. I have.</p> <p>23 Q. How many times?</p> <p>24 A. Twice, I believe.</p> <p>25 Q. And can you tell me, to the extent</p>
<p>Page 8</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 you can recall, approximately when those</p> <p>3 depositions took place?</p> <p>4 A. Both were during COVID, I believe</p> <p>5 March of 2020 and then a follow-up maybe in the</p> <p>6 fall 2020.</p> <p>7 Q. And were they personal or were they</p> <p>8 business related?</p> <p>9 A. They were business.</p> <p>10 Q. And can you -- were they in</p> <p>11 connection with the same case or with different</p> <p>12 cases?</p> <p>13 A. They were in connection with a</p> <p>14 different case.</p> <p>15 Q. Can you tell me generally what that</p> <p>16 case is?</p> <p>17 A. It was an eminent domain dispute in</p> <p>18 McKinney, Texas, with an -- with an energy</p> <p>19 company.</p> <p>20 Q. Did you testify in your individual</p> <p>21 capacity or as a corporate representative, if you</p> <p>22 recall?</p> <p>23 A. As a corporate rep.</p> <p>24 Q. And which corporation did you testify</p> <p>25 on behalf of?</p>	<p>Page 9</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. I believe the same one, NexPoint Real</p> <p>3 Estate Partners.</p> <p>4 Q. From time to time today, I may refer</p> <p>5 to that entity as HCRE; will you understand that</p> <p>6 I'm referring to the same entity?</p> <p>7 A. Sure.</p> <p>8 Q. And did NexPoint Real Estate Partners</p> <p>9 succeed through a name change from HCRE?</p> <p>10 A. It did.</p> <p>11 Q. And do you know when that happened?</p> <p>12 A. I believe sometime in 2020.</p> <p>13 Q. So -- so you've been deposed before,</p> <p>14 but let me just give you some general ground</p> <p>15 rules to make sure that we're on the same page</p> <p>16 here. I'm going to ask you a series of questions</p> <p>17 today, and it's very important that you allow me</p> <p>18 to finish my question before you begin your</p> <p>19 answer. Is that fair?</p> <p>20 A. It is.</p> <p>21 Q. And I will try to make sure that you</p> <p>22 have sufficient time to answer the question</p> <p>23 before I begin the next one. But if I fail to do</p> <p>24 so, will you let me know that.</p> <p>25 A. I will.</p>

<p style="text-align: right;">Page 10</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. If there's anything that I -- that I</p> <p>3 ask that you don't understand, will you let me</p> <p>4 know that as well.</p> <p>5 A. I will.</p> <p>6 Q. Okay. Because this deposition is</p> <p>7 being taken remotely, we're going to be posting</p> <p>8 documents up on the screen from time to time</p> <p>9 today. I don't know in advance which of the</p> <p>10 documents you will have seen previously, but I</p> <p>11 just want to give you assurances that if there's</p> <p>12 anything in any document that you believe you</p> <p>13 need to see in order to have a full context, will</p> <p>14 you just let me know that.</p> <p>15 A. I will.</p> <p>16 Q. Okay. Because I'm not here to trick</p> <p>17 you; I'm here to just elicit testimony from you</p> <p>18 on -- on the topics that are at issue in this</p> <p>19 case.</p> <p>20 Are you currently employed today,</p> <p>21 sir?</p> <p>22 A. I am.</p> <p>23 Q. And who's your employer?</p> <p>24 A. NexPoint Advisors.</p> <p>25 Q. Is that different from the NexPoint</p>	<p style="text-align: right;">Page 11</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Real Estate company you mentioned earlier?</p> <p>3 A. It is.</p> <p>4 Q. And what is NexPoint Advisors?</p> <p>5 A. It is the investment manager that</p> <p>6 manages most of our real estate vehicles on</p> <p>7 behalf of investors at NexPoint.</p> <p>8 Q. Do you have a title?</p> <p>9 A. Chief investment officer.</p> <p>10 Q. When did you obtain that title?</p> <p>11 A. March -- March or April of 2015.</p> <p>12 Q. Have you held the title of chief</p> <p>13 investment officer at NexPoint Advisors on a</p> <p>14 continuous basis since March 2015?</p> <p>15 A. I have.</p> <p>16 Q. Have --</p> <p>17 A. Can I make a clarification? It --</p> <p>18 NexPoint -- I'm the chief investment officer of</p> <p>19 NexPoint Real Estate Advisors, which is a</p> <p>20 subsidiary of NexPoint Advisors.</p> <p>21 Q. So NexPoint Real Estate Advisors, to</p> <p>22 the best of your knowledge, is wholly-owned by</p> <p>23 NexPoint Advisors?</p> <p>24 A. It is.</p> <p>25 Q. Have you served as the chief -- chief</p>
<p style="text-align: right;">Page 12</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 investment officer for NexPoint Real Estate</p> <p>3 Advisors on a continuous basis since March 2015?</p> <p>4 A. I have.</p> <p>5 Q. Have you been employed by any other</p> <p>6 person or any other entity since March of 2015?</p> <p>7 A. I became -- started working at</p> <p>8 Highland Capital Management in May of 2013 and</p> <p>9 that's who paid me my salary. And then on June</p> <p>10 -- in June of 2016 was I believe when I started</p> <p>11 getting paid by NexPoint Advisors.</p> <p>12 Q. And the entity that pays you is the</p> <p>13 entity that you personally identify as your</p> <p>14 employer. Do I have that right?</p> <p>15 A. Yeah, that's right.</p> <p>16 Q. Were you employed prior to March --</p> <p>17 withdrawn.</p> <p>18 Were you employed prior to May 2013?</p> <p>19 A. I was.</p> <p>20 Q. Can you just describe for me</p> <p>21 generally both your educational background and</p> <p>22 your employment history until the time you joined</p> <p>23 Highland in 2013?</p> <p>24 A. You bet. Yeah, I did undergrad at --</p> <p>25 at Vanderbilt University and then went to law</p>	<p style="text-align: right;">Page 13</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 school at Washington University in St. Louis. I</p> <p>3 practiced, I think, a year or so at Brian Cave in</p> <p>4 St. -- in St. Louis before joining Jones Day's</p> <p>5 private equity and M&A group in Dallas in 2011.</p> <p>6 Q. Do you hold a license to practice law</p> <p>7 today?</p> <p>8 A. I do.</p> <p>9 Q. And have you held a license to</p> <p>10 practice law on a continuous basis since the time</p> <p>11 you joined Brian Cave?</p> <p>12 A. I have.</p> <p>13 Q. Have you held any title at NexPoint</p> <p>14 Real Estate Advisors at any time since</p> <p>15 March 2015?</p> <p>16 A. Any other title?</p> <p>17 Q. Yes. I apologize. Other than chief</p> <p>18 investment officer.</p> <p>19 A. No.</p> <p>20 Q. Who do you report to today?</p> <p>21 A. Jim Dondero.</p> <p>22 Q. Have you reported to Mr. Dondero on a</p> <p>23 continuous basis since the time you became the</p> <p>24 chief investment officer in March of 2015?</p> <p>25 A. I have.</p>

<p>Page 14</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. Have you ever reported to anybody</p> <p>3 else during that period?</p> <p>4 A. I reported -- sorry, since what</p> <p>5 period?</p> <p>6 Q. Have you reported to anybody other</p> <p>7 than Mr. Dondero since you became the chief</p> <p>8 investment officer at NexPoint Real Estate</p> <p>9 Advisors in March of 2015?</p> <p>10 A. No.</p> <p>11 Q. And who did you report to prior to</p> <p>12 the time you became chief investment officer at</p> <p>13 least during the period that you were at</p> <p>14 Highland?</p> <p>15 A. Tom Sergeant.</p> <p>16 Q. And did you begin reporting to</p> <p>17 Mr. Sergeant when you joined Highland in 2013?</p> <p>18 A. I did.</p> <p>19 Q. And did you report to Mr. Sergeant on</p> <p>20 a continuous basis until March 2015 when you</p> <p>21 became the chief investment officer?</p> <p>22 A. I did.</p> <p>23 Q. Did you ever report to Mr. Sergeant at</p> <p>24 any time after March 2015?</p> <p>25 A. Not formally.</p>	<p>Page 15</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. Apologies.</p> <p>3 A. No worries.</p> <p>4 (Exhibit 1A was marked.)</p> <p>5 Q. All right. I'm going to put up on</p> <p>6 the screen a document that we've marked as</p> <p>7 Exhibit 1-A. And are you aware that I took</p> <p>8 Mr. Dondero's deposition last week?</p> <p>9 A. Yes, I am.</p> <p>10 Q. Okay.</p> <p>11 MR. MORRIS: So -- so, Bill, we're</p> <p>12 just going to use the same exhibit</p> <p>13 numbers -- they may not be in the same</p> <p>14 order -- but the same exhibit numbers that</p> <p>15 we used last week, although this one is</p> <p>16 new. So in Mr. Dondero's deposition,</p> <p>17 Exhibit 1 was his subpoena, and we'll call</p> <p>18 this 1A here, this Rule 30(b)(6) notice.</p> <p>19 Q. Can you see the document --</p> <p>20 MR. GAMEROS: That's fine.</p> <p>21 Q. Can you see the document that's up on</p> <p>22 the screen, Mr. McGraner?</p> <p>23 A. I -- I can.</p> <p>24 Q. Okay. We're going to scroll down to</p> <p>25 the -- to the topics. While we're doing that,</p>
<p>Page 16</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 can you tell me when the first time you saw this</p> <p>3 -- have you seen this document before today?</p> <p>4 A. I have.</p> <p>5 Q. Okay. When did you see it for the</p> <p>6 first time?</p> <p>7 A. I don't recall specifically.</p> <p>8 Q. Okay. But do you understand that</p> <p>9 you're here to testify as HCRE's 30(b)(6) witness</p> <p>10 on the topics that are listed in this notice?</p> <p>11 A. I do.</p> <p>12 Q. Okay. So this can be a little tricky</p> <p>13 sometimes because I'm asking you questions both</p> <p>14 in your individual capacity and in your capacity</p> <p>15 as a corporate representative. So this is the</p> <p>16 ground rule that I'd like to try to establish,</p> <p>17 but if you have -- ever have any questions just</p> <p>18 let me know. And the ground rule is pretty</p> <p>19 simple: Unless I specifically ask you about you</p> <p>20 personally, all of the questions are about you in</p> <p>21 your corporate capacity as HCRE's representative.</p> <p>22 Okay?</p> <p>23 A. Okay.</p> <p>24 Q. Okay. But for this series of</p> <p>25 questions, all of the questions are going to be</p>	<p>Page 17</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 personal just about the things that you</p> <p>3 personally did. Okay?</p> <p>4 A. Okay.</p> <p>5 Q. Is there any reason -- is there any</p> <p>6 reason today that you can't give complete,</p> <p>7 honest, and truthful testimony?</p> <p>8 A. No.</p> <p>9 Q. Did you personally do anything to</p> <p>10 prepare for today's deposition?</p> <p>11 A. I did.</p> <p>12 Q. What did you do?</p> <p>13 A. I met with our counsel. I reviewed</p> <p>14 testimony of Jim Dondero, Mark Patrick,</p> <p>15 Austin Thomas, Jim Seery, Mark Barker. I</p> <p>16 reviewed the LLC agreement of HCRE. I reviewed</p> <p>17 the KeyBank loan documents, including the pledge</p> <p>18 -- pledge agreements, collateral package,</p> <p>19 guaranty documents. I reviewed our original</p> <p>20 underwriting on the transaction -- the</p> <p>21 transaction I believe we're speaking about today.</p> <p>22 And that's -- that's about it.</p> <p>23 Q. Did you review any tax returns?</p> <p>24 A. No.</p> <p>25 Q. Did you review any emails or other</p>

<p>Page 18</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 written communications?</p> <p>3 A. I did. I reviewed emails from the</p> <p>4 time of the transaction -- the original</p> <p>5 transaction the summer of -- of 2018, the emails</p> <p>6 or -- go ahead.</p> <p>7 Q. Did you review any emails that have</p> <p>8 not been previously marked as an exhibit in a</p> <p>9 deposition?</p> <p>10 A. I don't think so.</p> <p>11 Q. Did you review all of the documents</p> <p>12 that were marked in prior depositions?</p> <p>13 A. I did.</p> <p>14 Q. Did you speak with anybody other than</p> <p>15 counsel in connection with your preparation for</p> <p>16 today's deposition?</p> <p>17 A. No.</p> <p>18 Q. You didn't speak with Mr. Dondero?</p> <p>19 A. No.</p> <p>20 Q. You didn't speak with Mr. Broadus?</p> <p>21 A. No.</p> <p>22 Q. You didn't speak with anybody at</p> <p>23 BH Equities?</p> <p>24 A. No.</p> <p>25 Q. You didn't speak with anybody at</p>	<p>Page 19</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Barker Viggato?</p> <p>3 A. No.</p> <p>4 Q. Okay. I want to speed this up a</p> <p>5 little bit and just ask you generally is there</p> <p>6 any topic that is in the 30(b)(6) deposition</p> <p>7 notice that you reviewed before today that you do</p> <p>8 not believe you're able to answer questions about</p> <p>9 on behalf of HCRE?</p> <p>10 A. I didn't memorize the -- the topics.</p> <p>11 So...</p> <p>12 Q. Okay. Can we scroll down slowly?</p> <p>13 And I'll -- I'll try to summarize them, but,</p> <p>14 again, if you need to read, I don't mean to rush</p> <p>15 you. But Topic 1 --</p> <p>16 A. Okay.</p> <p>17 Q. -- deals with the execution and</p> <p>18 drafting of the original LLC agreement in</p> <p>19 August 2018.</p> <p>20 Are you -- are you prepared to</p> <p>21 testify as to those issues?</p> <p>22 A. Yes.</p> <p>23 Q. Topic 2 concerns the KeyBank loan</p> <p>24 agreement. I think you said that you've reviewed</p> <p>25 that, and are you prepared to answer questions on</p>
<p>Page 20</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 those topics?</p> <p>3 A. I am.</p> <p>4 Q. Topic 3 deals with the removal of</p> <p>5 Highland as a borrower under the KeyBank loan</p> <p>6 agreement. Are you able to testify about that?</p> <p>7 A. Yes.</p> <p>8 Q. Topic 4 deals with the amended LLC</p> <p>9 agreement, that's the agreement that was signed</p> <p>10 with BH Equities in March of 2019.</p> <p>11 Are you prepared to testify about</p> <p>12 that?</p> <p>13 A. Yes.</p> <p>14 Q. And Number 5 addresses assertions</p> <p>15 that were made in HCRE's response concerning</p> <p>16 alleged improper allocations of ownership</p> <p>17 interests.</p> <p>18 Are you prepared to testify about</p> <p>19 that?</p> <p>20 A. Yes.</p> <p>21 Q. Are you prepared to testify about</p> <p>22 SE Multifamily distributions as set forth in</p> <p>23 paragraph 6 and Topic 6?</p> <p>24 A. Yes.</p> <p>25 Q. Are you prepared to testify about</p>	<p>Page 21</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 SE Multifamily's allocation of profits and losses</p> <p>3 among its members?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Topics 8 and 9 deal with --</p> <p>6 well, we'll take them one at a time. Are you</p> <p>7 prepared to testify about any errors that HCRE</p> <p>8 alleges or asserts are contained in the amended</p> <p>9 LLC agreement?</p> <p>10 A. Yes.</p> <p>11 Q. Are you prepared to testify about the</p> <p>12 allocation of interests and whether or not there</p> <p>13 was an inaccurate description of those interests</p> <p>14 in the amended LLC agreement as set forth in</p> <p>15 Topic 9?</p> <p>16 A. Yes.</p> <p>17 Q. Are you prepared to testify to</p> <p>18 communications concerning the allocation of</p> <p>19 membership interests in SE Multifamily?</p> <p>20 A. Yes.</p> <p>21 Q. Topic 11 deals with tax filings. Are</p> <p>22 you generally prepared to testify as to</p> <p>23 SE Multifamily's tax filings?</p> <p>24 A. Yeah, generally.</p> <p>25 Q. Okay. 12, sources of capital, are</p>

<p style="text-align: right;">Page 22</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 you prepared to testify as to --</p> <p>3 A. Yes.</p> <p>4 Q. -- HCRE's sources of capital?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Are you prepared to testify as</p> <p>7 to HCRE's responses to Highland's discovery</p> <p>8 requests?</p> <p>9 A. Yes.</p> <p>10 Q. And 14, 15, 16 all ask you to</p> <p>11 identify certain individuals -- actually, 17 as</p> <p>12 well -- as to whether, you know, they were</p> <p>13 authorized to act on behalf of HCRE or Highland</p> <p>14 and who was employed.</p> <p>15 Are you prepared to testify as to</p> <p>16 those topics?</p> <p>17 A. Yes.</p> <p>18 Q. Okay.</p> <p>19 MR. MORRIS: We can take that down</p> <p>20 now. We may go back to it from time to</p> <p>21 time.</p> <p>22 Q. (BY MR. MORRIS) So we've been talking</p> <p>23 about this entity, HCRE. I assume that that's an</p> <p>24 entity with which you are familiar?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 23</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. Okay. And -- and these questions</p> <p>3 again, are just going to you in your individual</p> <p>4 capacity.</p> <p>5 A. Okay.</p> <p>6 Q. It's -- unless I say otherwise.</p> <p>7 Do you know -- does HCRE stand for</p> <p>8 anything? Is that an acronym?</p> <p>9 A. Highland Capital Real Estate.</p> <p>10 Q. Okay. And do you know when HCRE was</p> <p>11 formed?</p> <p>12 A. November -- I believe, November 2014.</p> <p>13 Q. And do you have an understanding as</p> <p>14 to the business of HCRE?</p> <p>15 A. To invest in -- in real estate assets</p> <p>16 generally.</p> <p>17 Q. Do you know who owns HCRE today?</p> <p>18 A. I do.</p> <p>19 Q. Who owns HCRE?</p> <p>20 A. I believe it is -- the ultimate</p> <p>21 beneficiaries are Jim, myself, and Scott</p> <p>22 Ellington.</p> <p>23 Q. Do you know what percentage interest</p> <p>24 each of the three of you directly or indirectly</p> <p>25 has in HCRE?</p>
<p style="text-align: right;">Page 24</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. 70/25/5, respectively.</p> <p>3 Q. Has that changed since the time HCRE</p> <p>4 was formed?</p> <p>5 A. No.</p> <p>6 Q. To the best of your knowledge, has</p> <p>7 HCRE had any owners other than the three of you?</p> <p>8 A. No.</p> <p>9 Q. So it's fair to say that since HCRE</p> <p>10 was formed in 2014, the only owners have been</p> <p>11 you, Mr. Dondero, and Mr. Ellington, and you've</p> <p>12 owned your respective interests on a 70/25/5</p> <p>13 basis?</p> <p>14 A. That's fair.</p> <p>15 Q. Okay. Did you personally ever invest</p> <p>16 any capital -- any of your own money directly or</p> <p>17 indirectly into HCRE?</p> <p>18 A. Years ago.</p> <p>19 Q. How much --</p> <p>20 A. I mean, what I've had. Sorry.</p> <p>21 Q. I didn't mean to cut you off.</p> <p>22 When did you put money into HCRE?</p> <p>23 A. The first -- the first deal we did</p> <p>24 back in 2014.</p> <p>25 Q. Do you recall how much money you</p>	<p style="text-align: right;">Page 25</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 invested?</p> <p>3 A. I think it was 25,000.</p> <p>4 Q. Do you know whether Mr. Dondero or</p> <p>5 Mr. Ellington invested any money into HCRE at any</p> <p>6 time?</p> <p>7 A. I don't know whether Mr. Ellington</p> <p>8 did, but I do know that Jim has over the years</p> <p>9 contributed capital. I don't know the amounts,</p> <p>10 though.</p> <p>11 Q. How do you know that he contributed</p> <p>12 capital?</p> <p>13 A. Whenever we needed, you know, capital</p> <p>14 or equity capital from time to time, he would</p> <p>15 step up and contribute.</p> <p>16 Q. And do you know if that money came</p> <p>17 from his own personal assets or did they come</p> <p>18 from a different source other than Mr. Dondero?</p> <p>19 A. I believe they came from his personal</p> <p>20 assets and then the loans -- equity loans from</p> <p>21 various -- various of his affiliates.</p> <p>22 Q. Would those affiliates include</p> <p>23 Highland?</p> <p>24 A. Yes. I believe so.</p> <p>25 Q. Are you aware that Highland's loaned</p>

<p style="text-align: right;">Page 26</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 money from HCRE from time to time?</p> <p>3 A. Yes.</p> <p>4 Q. Are you familiar with the notes that</p> <p>5 HCRE issued in favor of Highland in exchange for</p> <p>6 those loans?</p> <p>7 A. I'm aware of a note.</p> <p>8 Q. What note are you aware of?</p> <p>9 A. I think the original note was -- was</p> <p>10 Highland and then as deals -- as we did more</p> <p>11 deals, I believe it was either Highland or this</p> <p>12 other affiliate, Rand contributed capital or --</p> <p>13 or made loans.</p> <p>14 Q. Has Mr. Dondero made -- withdrawn.</p> <p>15 It's your understanding that</p> <p>16 Mr. Dondero made investments in HCRE from his own</p> <p>17 personal assets. Do I have that right?</p> <p>18 A. You -- you do.</p> <p>19 Q. But you don't have any understanding</p> <p>20 as to the aggregate amount of those investments;</p> <p>21 correct?</p> <p>22 A. Of his personal contributions?</p> <p>23 Q. Yeah.</p> <p>24 A. I -- I think it is substantial, I</p> <p>25 would say seven figures, but I don't know the</p>	<p style="text-align: right;">Page 27</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 exact amount.</p> <p>3 Q. Is it reflected in HCRE's books and</p> <p>4 records anywhere?</p> <p>5 A. I believe so.</p> <p>6 Q. Was the money given in the form of</p> <p>7 loans or in the form of equity or in some other</p> <p>8 form?</p> <p>9 A. I think equity, but I'm not</p> <p>10 specifically sure.</p> <p>11 Q. Would it be reflected on HCRE's</p> <p>12 balance sheet?</p> <p>13 A. It -- it should be, yes.</p> <p>14 Q. Do you ever review HCRE's balance</p> <p>15 sheet?</p> <p>16 A. I used to. When this bankruptcy</p> <p>17 happened, it was transferred to Highland and so</p> <p>18 they -- they kept the books.</p> <p>19 Q. As Mr. Dondero put additional equity</p> <p>20 contributions in HCRE, was your membership</p> <p>21 interest in HCRE ever diluted?</p> <p>22 A. Not that I'm aware of.</p> <p>23 Q. Did you ever discuss with Mr. Dondero</p> <p>24 whether your equity interests would be diluted as</p> <p>25 a result of his additional capital contributions?</p>
<p style="text-align: right;">Page 28</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. No.</p> <p>3 Q. Did you ever discuss with him the</p> <p>4 timing or amount of any additional equity</p> <p>5 investment that he personally made into HCRE?</p> <p>6 A. Did I -- can you be a little bit more</p> <p>7 specific.</p> <p>8 Q. Sure. So from time to time he would</p> <p>9 make these additional equity investments, to the</p> <p>10 best of your knowledge; right?</p> <p>11 A. That's right.</p> <p>12 Q. Did you ever discuss that with him?</p> <p>13 A. Yeah, if we needed additional capital</p> <p>14 for -- for a purchase or an investment, we</p> <p>15 discussed -- we discussed it.</p> <p>16 Q. And did -- did HCRE ever repay any of</p> <p>17 the money that Mr. Dondero put into HCRE?</p> <p>18 A. I don't -- I don't know.</p> <p>19 Q. How did it come to be that you and</p> <p>20 Mr. Ellington and Mr. Dondero formed this company</p> <p>21 to make real estate investments?</p> <p>22 A. I think you'd have to ask Jim why he</p> <p>23 set it up the way he did. I don't -- I don't</p> <p>24 know.</p> <p>25 Q. Was the opportunity given to anybody</p>	<p style="text-align: right;">Page 29</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 other than the three of you?</p> <p>3 A. No.</p> <p>4 Q. Can you think of any reason why</p> <p>5 Highland couldn't have made the real estate</p> <p>6 investments that HCRE made?</p> <p>7 A. Yes.</p> <p>8 Q. Why couldn't Highland have made the</p> <p>9 real estate investments that HCRE made?</p> <p>10 A. I don't believe Highland had any</p> <p>11 specific real estate investment mandate at the</p> <p>12 time HCRE was formed.</p> <p>13 Q. What do you mean by the word</p> <p>14 "mandate"?</p> <p>15 A. Highland Capital Management as an</p> <p>16 investment manager managing various funds did not</p> <p>17 have a dedicated real estate fund at that time.</p> <p>18 Q. But is there any reason it couldn't</p> <p>19 have created one, to the best of your knowledge?</p> <p>20 A. No.</p> <p>21 Q. Okay.</p> <p>22 A. Well, I think it -- Highland hasn't</p> <p>23 had a great track record in real estate</p> <p>24 investments prior to my -- my joining Highland.</p> <p>25 Q. Do you know who controls HCRE today?</p>

<p style="text-align: right;">Page 30</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. Jim does.</p> <p>3 Q. To the best of your knowledge, has</p> <p>4 Mr. Dondero controlled HCRE since the time it was</p> <p>5 formed in 2014?</p> <p>6 A. Yes.</p> <p>7 Q. To the best of your knowledge, has</p> <p>8 anybody other than Mr. Dondero ever controlled</p> <p>9 HCRE since the time it was formed?</p> <p>10 A. No.</p> <p>11 Q. What's the basis for your</p> <p>12 understanding that Mr. Dondero has controlled</p> <p>13 HCRE on a continuous basis since the time it was</p> <p>14 formed?</p> <p>15 A. He's the sole manager.</p> <p>16 Q. Has he been the sole manager, to the</p> <p>17 best of your knowledge, since the time that HCRE</p> <p>18 was formed?</p> <p>19 A. Yes.</p> <p>20 Q. All right. Now these questions are</p> <p>21 in your capacity as HCRE's corporate</p> <p>22 representative as they relate to some of the</p> <p>23 topics that we just looked at.</p> <p>24 Do you know whether HCRE has any</p> <p>25 officers today?</p>	<p style="text-align: right;">Page 31</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. I think when we formed it, I -- I may</p> <p>3 have been vice president and secretary.</p> <p>4 Q. And is it your understanding that</p> <p>5 you've served as HCRE's vice president and</p> <p>6 secretary on a continuous basis since it was</p> <p>7 formed in 2014?</p> <p>8 A. Yes.</p> <p>9 Q. Have you ever prepared any corporate</p> <p>10 minutes?</p> <p>11 A. No.</p> <p>12 Q. To the best of your knowledge, has</p> <p>13 there ever been a -- a meeting -- a corporate</p> <p>14 meeting of HCRE?</p> <p>15 A. No formal meetings but informal, yes.</p> <p>16 Q. Has -- has HCRE ever adopted any</p> <p>17 resolutions, to the best of your knowledge?</p> <p>18 A. Yeah, whenever we enter into a real</p> <p>19 estate transaction, you have to have written</p> <p>20 consents and authority and representations of</p> <p>21 authority for -- for borrowing money and -- and</p> <p>22 transacting.</p> <p>23 Q. And --</p> <p>24 A. So I would -- I would characterize</p> <p>25 those as resolutions.</p>
<p style="text-align: right;">Page 32</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. And was it your responsibility as the</p> <p>3 secretary to prepare those resolutions?</p> <p>4 THE WITNESS: Bless you. Bless</p> <p>5 you.</p> <p>6 MR. GAMEROS: Thank you.</p> <p>7 A. It was either the legal team or -- or</p> <p>8 our outside counsel -- external counsel usually</p> <p>9 prepared those written consents in connection</p> <p>10 with real estate investments.</p> <p>11 Q. Okay. Are you aware of any</p> <p>12 resolutions that are -- have ever been prepared</p> <p>13 or written consents other than those that you've</p> <p>14 described?</p> <p>15 A. No.</p> <p>16 Q. Are you aware of any officers of HCRE</p> <p>17 other than yourself as the vice president and</p> <p>18 secretary at any time since it was formed?</p> <p>19 A. I don't know if Jim has a formal</p> <p>20 title, but he's the manager. And I don't -- I</p> <p>21 don't know if Scott has a title.</p> <p>22 Q. But you're not aware of any officer</p> <p>23 of HCRE at any time since it was formed other</p> <p>24 than Mr. Dondero and you?</p> <p>25 A. That's right.</p>	<p style="text-align: right;">Page 33</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. Okay. Does HCRE have any employees</p> <p>3 today?</p> <p>4 A. No.</p> <p>5 Q. Has HCRE ever had any employees since</p> <p>6 the time it was formed in 2014?</p> <p>7 A. No.</p> <p>8 Q. How many investments has HCRE made</p> <p>9 since the time it was formed, approximately?</p> <p>10 A. Would you consider portfolio</p> <p>11 acquisitions to be one investment or multiple</p> <p>12 investments?</p> <p>13 Q. Let's just call that one for</p> <p>14 simplicity.</p> <p>15 A. Okay. Say 20, 25.</p> <p>16 Q. Do you have a ballpark as to the</p> <p>17 aggregate value, plus or minus a few billion?</p> <p>18 A. A few million or billion. It's not a</p> <p>19 billion. I would say probably a billion three</p> <p>20 billion, a billion four.</p> <p>21 Q. Okay. So how did HCRE make 20 to 25</p> <p>22 investments worth an aggregate of a billion three</p> <p>23 to a billion four if it had no employees and no</p> <p>24 officers other than you and Mr. Dondero?</p> <p>25 A. It utilized Highland vis-a-vis a</p>

<p>Page 34</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 shared services agreement, I think, and then also</p> <p>3 NexPoint Advisors as well, the real estate team</p> <p>4 at NexPoint.</p> <p>5 Q. What shared services --</p> <p>6 A. In -- in addition -- in addition to</p> <p>7 our, you know, external operating part --</p> <p>8 parties.</p> <p>9 Q. Which -- which shared services</p> <p>10 agreement are you referring to?</p> <p>11 A. There's a shared services -- there</p> <p>12 was a shared services agreement, I believe, with</p> <p>13 NexPoint Advisors and Highland.</p> <p>14 Q. Is that one agreement or is it two</p> <p>15 different agreements?</p> <p>16 A. I believe it's one agreement.</p> <p>17 Q. Was that an oral agreement or a</p> <p>18 written agreement?</p> <p>19 A. I believe it was put in place -- a</p> <p>20 written agreement was put in place following the</p> <p>21 initial public offering of NexPoint Residential</p> <p>22 Trust.</p> <p>23 Q. Have you ever seen it?</p> <p>24 A. Yes.</p> <p>25 Q. And has --</p>	<p>Page 35</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. It's been awhile.</p> <p>3 Q. Pardon me?</p> <p>4 A. Been awhile.</p> <p>5 Q. When -- when -- when was that</p> <p>6 transaction that you just described -- when --</p> <p>7 when was this written agreement entered into?</p> <p>8 A. I don't know when the agreement was</p> <p>9 written or entered into, but the IPO was in April</p> <p>10 of 2015.</p> <p>11 Q. Do you recall whether that agreement</p> <p>12 required HCRE to pay Highland for services</p> <p>13 rendered?</p> <p>14 A. I don't.</p> <p>15 Q. Do you recall if HCRE ever paid</p> <p>16 Highland any money for services rendered?</p> <p>17 A. I don't -- I don't -- I don't recall.</p> <p>18 Q. Did you ever authorize HCRE to pay</p> <p>19 Highland anything of value in exchange for</p> <p>20 services rendered?</p> <p>21 A. No.</p> <p>22 Q. Do you know if Mr. Dondero ever</p> <p>23 authorized anybody on behalf of HCRE to pay</p> <p>24 anything of value to Highland for services</p> <p>25 rendered?</p>
<p>Page 36</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. No.</p> <p>3 Q. Does HCRE contend that Highland ever</p> <p>4 breached its agreement with HCRE -- the shared</p> <p>5 services agreement you just described?</p> <p>6 A. No.</p> <p>7 Q. When was the last time you saw this</p> <p>8 written agreement?</p> <p>9 A. I believe it was probably around the</p> <p>10 time it was entered into. I'm aware of</p> <p>11 amendments made because we increased -- as</p> <p>12 NexPoint got bigger and generated income, we --</p> <p>13 we -- we gave more money to Highland.</p> <p>14 Q. Gave more money -- money to Highland?</p> <p>15 A. Yeah, the fees were increased --</p> <p>16 those shared services fees were increased as</p> <p>17 NexPoint fees were increased, I believe.</p> <p>18 Q. Those fees were from NexPoint</p> <p>19 Advisors, not from HCRE; correct?</p> <p>20 A. That's right.</p> <p>21 Q. Do you know who -- who is authorized</p> <p>22 to act on behalf of HCRE today?</p> <p>23 A. Jim or myself.</p> <p>24 Q. Has anybody ever been authorized to</p> <p>25 act on behalf of HCRE other than you and Jim</p>	<p>Page 37</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 since the time it was formed in 2014?</p> <p>3 A. Not that I'm aware of.</p> <p>4 Q. Did you ever delegate any authority</p> <p>5 to act on behalf of HCRE to any person in the</p> <p>6 world?</p> <p>7 A. Yeah, I -- yes.</p> <p>8 Q. And who did you -- who did you</p> <p>9 delegate that responsibility to?</p> <p>10 A. In connection with investments from</p> <p>11 time to time, I delegated to internal lawyers,</p> <p>12 external lawyers, bankers, operating partners.</p> <p>13 Q. All right. I'm not talking about --</p> <p>14 and maybe it's in the question -- I'm not asking</p> <p>15 you about delegating kind of work. I'm asking</p> <p>16 you whether you ever delegated --</p> <p>17 A. Sorry.</p> <p>18 Q. -- delegated decision-making</p> <p>19 authority to any person in the world. Did you</p> <p>20 ever tell somebody that they could make the</p> <p>21 decision on their own?</p> <p>22 A. Sure.</p> <p>23 Q. Okay. Can you think of anything</p> <p>24 having to do with SE Multifamily's set of</p> <p>25 transactions that you specifically delegated</p>

<p>Page 38</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 decision-making authority to another person?</p> <p>3 A. Sure.</p> <p>4 Q. Do you know who? Who and what issues</p> <p>5 did you delegate?</p> <p>6 A. Yeah, the daily management of the</p> <p>7 properties to BH management, you know, they make</p> <p>8 decisions on leasing, staffing, those -- those</p> <p>9 sorts of things.</p> <p>10 Q. Okay. Anything else?</p> <p>11 A. I think generally that's it.</p> <p>12 Q. Okay. So to the best of your</p> <p>13 recollection, in connection with the</p> <p>14 SE Multifamily transactions, the only delegation</p> <p>15 of decision-making authority that you recall ever</p> <p>16 making was to delegate to BH Equities the</p> <p>17 decision-making over property management; is that</p> <p>18 fair?</p> <p>19 A. That's fair. I would say that</p> <p>20 there's -- we were -- or HCRE was deferential to</p> <p>21 experts or professionals with respect to certain</p> <p>22 aspects of the structuring of the transaction,</p> <p>23 the financing of the transaction, the negotiation</p> <p>24 of the transaction, that we relied on advice.</p> <p>25 Q. And you -- and you or Mr. Dondero</p>	<p>Page 39</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 made the ultimate decision based on that advice;</p> <p>3 is that fair?</p> <p>4 A. Sure.</p> <p>5 Q. With -- with the exception of the</p> <p>6 property management issues for which you</p> <p>7 delegated to BH Equities; fair?</p> <p>8 A. Sure, yeah.</p> <p>9 Q. Okay. Which professionals are you</p> <p>10 referring to, to the extent you can recall? And</p> <p>11 again, we're just talking about the</p> <p>12 SE Multifamily series of transactions.</p> <p>13 A. Okay. On the legal side, we -- we</p> <p>14 deferred to Winston & Strawn, we deferred to</p> <p>15 Wick Phillips, deferred to internal legal</p> <p>16 counsel, deferred to Hunton & Williams for tax</p> <p>17 structuring advice. That's generally about it.</p> <p>18 Q. I just -- I just want to make sure</p> <p>19 that I understand the list that you just</p> <p>20 provided, Winston & Strawn, Wick Phillips,</p> <p>21 internal legal counsel, and Hunton & Williams,</p> <p>22 can I just refer to them collectively as the</p> <p>23 professions?</p> <p>24 A. You bet.</p> <p>25 Q. Okay. Do I understand you correctly</p>
<p>Page 40</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 that you and Mr. Dondero looked to the</p> <p>3 professionals for advice, and based on that</p> <p>4 advice, you and Mr. Dondero made decisions?</p> <p>5 A. Sure.</p> <p>6 Q. Does HCRE contend that any of the</p> <p>7 professionals made any mistakes or errors in</p> <p>8 connection with the advice that it provided to</p> <p>9 you and Mr. Dondero?</p> <p>10 A. That's -- that's a little bit</p> <p>11 complicated.</p> <p>12 Q. Have -- has HCRE put any of the</p> <p>13 professionals on notice that HCRE contends that</p> <p>14 they made a material mistake in connection with</p> <p>15 any aspect of the SE Multifamily set of</p> <p>16 transactions?</p> <p>17 A. No.</p> <p>18 Q. Does HCRE have any intention to put</p> <p>19 any of the professionals on notice that they made</p> <p>20 a mistake or an error of some kind in connection</p> <p>21 with the advice that they provided to HCRE in</p> <p>22 connection with the SE Multifamily transactions?</p> <p>23 A. No.</p> <p>24 Q. Are you generally familiar with</p> <p>25 HCRE's Proof of Claim that was filed in the</p>	<p>Page 41</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Highland bankruptcy?</p> <p>3 A. Yes.</p> <p>4 Q. Have you seen it before?</p> <p>5 A. Yes.</p> <p>6 (Exhibit 20 was marked.)</p> <p>7 Q. All right. Let's put it up on the</p> <p>8 screen. It's previously been marked as</p> <p>9 Exhibit 20. And let's just scroll down briefly,</p> <p>10 you'll see that -- stop there -- that this was</p> <p>11 the Proof of Claim. Go up to Number 1 on this</p> <p>12 page. It's filed by HCRE Partner, LLC.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. That probably should have said</p> <p>16 HCRE Partners, LLC; right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. If we can scroll down to the</p> <p>19 next page, you'll see that --</p> <p>20 MR. MORRIS: Keep going. Keep</p> <p>21 going.</p> <p>22 Q. -- that Mr. Dondero's electronic</p> <p>23 signature has been placed on this.</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 42</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. And then if we continue to Exhibit A,</p> <p>3 you'll see the basis of the claim.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Do you recall when you first -- when</p> <p>7 you saw this document for the first time?</p> <p>8 A. No, I don't re- -- I don't recall</p> <p>9 when I saw it for the first time.</p> <p>10 Q. Do you recall -- I'll represent to</p> <p>11 you that this was filed in the Highland</p> <p>12 bankruptcy in -- on April 8, 2020.</p> <p>13 Do you recall if you saw this</p> <p>14 document before it was filed or after it was</p> <p>15 filed?</p> <p>16 A. I don't recall.</p> <p>17 Q. Do you recall the circumstances under</p> <p>18 which you first saw this document? Do you recall</p> <p>19 who showed it to you? where you were? how you</p> <p>20 learned about it? Anything?</p> <p>21 A. Yeah. Ms. -- Mr. Sauter, he works</p> <p>22 here, showed it to me.</p> <p>23 Q. Did he show you a hard copy of it?</p> <p>24 A. I believe so.</p> <p>25 Q. Without telling me of your</p>	<p style="text-align: right;">Page 43</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 conversations with Mr. Sauter, can you recall if</p> <p>3 there was an event occurring at a particular</p> <p>4 moment in time that would have caused you to</p> <p>5 speak with him about this document?</p> <p>6 A. I believe there was a deadline</p> <p>7 approaching, and we wanted to protect our</p> <p>8 interest in the bankruptcy.</p> <p>9 Q. Did you ever discuss this document</p> <p>10 with Mr. Dondero?</p> <p>11 A. No.</p> <p>12 Q. Did you personally ever discuss this</p> <p>13 document with any attorney at the law firm</p> <p>14 Bonds Ellis?</p> <p>15 A. No, I didn't.</p> <p>16 Q. Did you ever discuss this document</p> <p>17 with anybody in the world other than Mr. Sauter</p> <p>18 and your lawyer?</p> <p>19 A. No.</p> <p>20 Q. Is there any -- anything in writing</p> <p>21 that would reflect your communications with</p> <p>22 Mr. Sauter about this document?</p> <p>23 A. Not that I'm aware of.</p> <p>24 Q. Do you know who authorized the filing</p> <p>25 of this document?</p>
<p style="text-align: right;">Page 44</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. I -- I don't.</p> <p>3 Q. Did you approve of the filing of this</p> <p>4 document?</p> <p>5 A. No.</p> <p>6 Q. Do you know who approved the filing</p> <p>7 of this document?</p> <p>8 A. I don't.</p> <p>9 Q. And you don't recall if your</p> <p>10 conversation with Mr. Sauter happened before or</p> <p>11 after the document was filed; is that fair?</p> <p>12 A. We had ongoing conversations about</p> <p>13 this issue from the moment the bankruptcy was</p> <p>14 filed. So...</p> <p>15 Q. What issue are you referring to?</p> <p>16 What issue are you referring to?</p> <p>17 A. The fact that we wanted to protect</p> <p>18 our interests in the bankruptcy.</p> <p>19 Q. And how do you understand this</p> <p>20 document protects your interests?</p> <p>21 A. That's what we were advised by</p> <p>22 counsel to -- to do.</p> <p>23 Q. Okay. I'm just asking you for your</p> <p>24 understanding as to how this document</p> <p>25 accomplishes that objective?</p>	<p style="text-align: right;">Page 45</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. I think it provides standing for</p> <p>3 asserted claims.</p> <p>4 Q. Anything else?</p> <p>5 A. No.</p> <p>6 Q. Do you recall if you had an</p> <p>7 opportunity to comment on this document before it</p> <p>8 was filed?</p> <p>9 A. No.</p> <p>10 Q. You don't recall? Or you weren't</p> <p>11 given that opportunity?</p> <p>12 A. I -- I -- I did -- I did not get the</p> <p>13 opportunity.</p> <p>14 Q. So then is it fair to say that you</p> <p>15 didn't provide any comments on this document</p> <p>16 before it was filed?</p> <p>17 A. That's fair.</p> <p>18 Q. Okay. If we can scroll down to</p> <p>19 Exhibit A, have you seen this piece of the Proof</p> <p>20 of Claim before?</p> <p>21 A. I have.</p> <p>22 Q. Are you personally aware of any</p> <p>23 diligence that was done by HCRE to make sure that</p> <p>24 the statement set forth on Exhibit A was truthful</p> <p>25 and accurate before it was filed?</p>

<p style="text-align: right;">Page 46</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. Yeah, I mean, I'm -- I've lived</p> <p>3 transaction, I know what the intent of the</p> <p>4 transaction was. So...</p> <p>5 Q. All right. I'm not asking you about</p> <p>6 the intent of the transaction. I'm talking about</p> <p>7 what work was done by HCRE, if you know, to make</p> <p>8 sure that the statements in Exhibit A were</p> <p>9 truthful and accurate?</p> <p>10 A. Yeah, I think we -- we advise -- or</p> <p>11 we had conversations with counsel. I think that</p> <p>12 was it.</p> <p>13 Q. And who's we?</p> <p>14 A. Mr. Sauter and I.</p> <p>15 Q. Which counsel are you referring to?</p> <p>16 A. Bonds Ellis.</p> <p>17 Q. All right. I thought you testified</p> <p>18 earlier that you didn't speak with Bonds Ellis</p> <p>19 about this Proof of Claim. Am I wrong or are you</p> <p>20 just --</p> <p>21 A. No, you're not -- you're not wrong.</p> <p>22 Yeah, you're not wrong, I didn't speak with them.</p> <p>23 But DC would -- Mr. Sauter would speak with Bonds</p> <p>24 Ellis and then relay it -- the conversations to</p> <p>25 me.</p>	<p style="text-align: right;">Page 47</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. Okay. So just to make this cleaner</p> <p>3 here, you never personally communicated with</p> <p>4 Bonds Ellis about this Proof of Claim; correct?</p> <p>5 A. Correct.</p> <p>6 Q. To the best of your knowledge, the</p> <p>7 only person who communicated with Bonds Ellis</p> <p>8 about this Proof of Claim was Mr. Sauter;</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. You never gave any information to</p> <p>12 Bonds Ellis to support this Proof of Claim;</p> <p>13 correct?</p> <p>14 A. I gave information to Mr. Sauter.</p> <p>15 Q. Okay.</p> <p>16 A. What -- what he did with it, I don't</p> <p>17 know.</p> <p>18 Q. Okay.</p> <p>19 MR. MORRIS: So, again, I move to</p> <p>20 strike. I'm just preserving the record and</p> <p>21 I would just ask you to carefully listen to</p> <p>22 my question.</p> <p>23 Q. You never gave any information to</p> <p>24 Bonds Ellis in connection with this Proof of</p> <p>25 Claim; correct?</p>
<p style="text-align: right;">Page 48</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. Correct.</p> <p>3 Q. Do you know if Mr. Sauter ever gave</p> <p>4 any documents -- just a yes-or-no answer: Do you</p> <p>5 know whether Mr. Sauter ever gave any documents</p> <p>6 to Bonds Ellis in connection with this Proof of</p> <p>7 Claim?</p> <p>8 A. No.</p> <p>9 Q. Did you ever give Mr. Sauter any</p> <p>10 documents in connection with this Proof of Claim?</p> <p>11 Just yes or no.</p> <p>12 A. No.</p> <p>13 Q. Do you know if Mr. Sauter reviewed</p> <p>14 any documents before this Proof of Claim was</p> <p>15 filed? Withdrawn.</p> <p>16 Do you know if Mr. Sauter reviewed</p> <p>17 any documents in connection with this Proof of</p> <p>18 Claim before it was filed?</p> <p>19 A. Yeah, he was very aware of the LLC</p> <p>20 agreement.</p> <p>21 Q. Okay.</p> <p>22 MR. MORRIS: I move to strike. I</p> <p>23 don't want to know what he was aware of.</p> <p>24 Q. (BY MR. MORRIS) Do you know if he</p> <p>25 gave any documents to Bonds Ellis in connection</p>	<p style="text-align: right;">Page 49</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 with this Proof of Claim?</p> <p>3 A. I -- I don't know personally.</p> <p>4 Q. Did you personally ever review any</p> <p>5 documents in connection with your communications</p> <p>6 with Mr. Sauter about this Proof of Claim?</p> <p>7 A. I did.</p> <p>8 Q. What documents did you review?</p> <p>9 A. The LLC agreement.</p> <p>10 Q. Did you review the original LLC</p> <p>11 agreement, the amended LLC agreement, or both?</p> <p>12 A. Both.</p> <p>13 Q. Any others?</p> <p>14 A. Yeah -- yes, the financials.</p> <p>15 Q. Financial statements?</p> <p>16 A. Yes.</p> <p>17 Q. Anything else?</p> <p>18 A. No.</p> <p>19 Q. And when you use the phrase</p> <p>20 "financial statements," do you mean balance</p> <p>21 sheets, cash flow statements, or something else?</p> <p>22 A. The -- the whole gamut. The whole</p> <p>23 gamut. There's balance sheets, capital stacks,</p> <p>24 equity LOCs, income statements, all of it.</p> <p>25 Q. Did any of the documents that you</p>

<p>Page 50</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 just described, to the best of your recollection,</p> <p>3 ever state that Highland owed anything --</p> <p>4 withdrawn.</p> <p>5 Did any of the documents that you</p> <p>6 just described ever set Highland's membership</p> <p>7 interests in SE Multifamily at a percentage other</p> <p>8 than 46.06 percent?</p> <p>9 A. Yes. Yes.</p> <p>10 Q. Which document do you recall that set</p> <p>11 forth Highland's ownership interest in</p> <p>12 SE Multifamily other than at 46.06 percent?</p> <p>13 A. There were a set of documents sent to</p> <p>14 DSI, I believe, around the same time as this</p> <p>15 Proof of Claim was filed that I characterized the</p> <p>16 ownership percentages in influx.</p> <p>17 Q. So was this an email communication</p> <p>18 that you're thinking of?</p> <p>19 A. Yes. Well, it was actually a note</p> <p>20 within a financial statement that was provided to</p> <p>21 -- to DSI, I believe, Pachulski, Greg -- Greg was</p> <p>22 on there, and Mr. Seery was also copied.</p> <p>23 Q. And do you recall when this took</p> <p>24 place?</p> <p>25 A. Like I said, March -- I think March</p>	<p>Page 51</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 or April. I want to say March of 2020.</p> <p>3 Q. Do you recall -- DSI was the debtor's</p> <p>4 financial advisors; correct?</p> <p>5 A. That's right.</p> <p>6 Q. Do you recall that DSI had made</p> <p>7 requests for information concerning</p> <p>8 SE Multifamily?</p> <p>9 A. Yeah.</p> <p>10 Q. And -- and do you know whether or not</p> <p>11 those requests were fulfilled?</p> <p>12 A. Yes.</p> <p>13 Q. You believe they were?</p> <p>14 A. I believe they were.</p> <p>15 Q. Okay. Did you personally instruct</p> <p>16 anybody to fulfill those requests?</p> <p>17 A. No. Fred Caruso at the time came</p> <p>18 over to our side of the office and elicit the --</p> <p>19 elicited the information from one of my</p> <p>20 teammates. And so my teammate sent all this</p> <p>21 information -- everything we had to Fred in that</p> <p>22 communication.</p> <p>23 Q. And the communication that you're</p> <p>24 describing -- I guess I just want to make sure I</p> <p>25 have this right -- were -- were there two</p>
<p>Page 52</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 documents that reflected an ownership interest</p> <p>3 other than 46.06 percent, one of which would have</p> <p>4 been in email that you sent that characterized</p> <p>5 the percentage as being influx, and the other</p> <p>6 document was a note in a financial statement. Do</p> <p>7 I have that right?</p> <p>8 A. Among other documents, yeah.</p> <p>9 Q. What other documents can you recall</p> <p>10 that had an ownership percentage interest other</p> <p>11 than 46.06 percent for Highland?</p> <p>12 A. I meant there was other documents</p> <p>13 along with the communication note, the -- the</p> <p>14 Excel spreadsheet that I mentioned about the</p> <p>15 ownership percentage being influx, that's the --</p> <p>16 that's what I'm talking about.</p> <p>17 Q. And what does it mean when you --</p> <p>18 when you told them that was influx, what does</p> <p>19 that mean?</p> <p>20 A. There were 28 assets. We had a</p> <p>21 general business plan on how we would chop up the</p> <p>22 portfolio, where assets would ultimately land,</p> <p>23 what assets would be sold, that was thrown into a</p> <p>24 tailspin when we got re-traded by KeyBank and</p> <p>25 never got settled.</p>	<p>Page 53</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. Who got re-traded by KeyBank?</p> <p>3 A. The Tuesday we were -- the Monday</p> <p>4 before we were supposed to close the transaction</p> <p>5 with Starwood Capital Group, one of the largest</p> <p>6 in the -- asset managers in the country, KeyBank</p> <p>7 called me and told me they couldn't close. And</p> <p>8 so we had \$40 million of hard earned money up at</p> <p>9 the time, and like I said, threw us into a</p> <p>10 tailspin.</p> <p>11 Q. But who was re-traded?</p> <p>12 A. The -- the partner, the</p> <p>13 SE Multifamily.</p> <p>14 Q. Was SE Multifamily a signatory to the</p> <p>15 KeyBank loan agreement?</p> <p>16 A. I -- I don't think so. Or it -- I</p> <p>17 don't know. I'll have to -- I'll have to look.</p> <p>18 I know a lot of the members were, or at least the</p> <p>19 people that pledged assets.</p> <p>20 Q. And -- and did you on behalf of HCRE</p> <p>21 -- withdrawn.</p> <p>22 Did HCRE ultimately agree to whatever</p> <p>23 re-trade you're referring to?</p> <p>24 A. Yeah. We didn't have a choice.</p> <p>25 Q. So that re-trade is reflected in the</p>

<p>Page 54</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 signed and executed KeyBank loan documentation</p> <p>3 that you reviewed in connection with today's</p> <p>4 deposition; correct?</p> <p>5 A. Not entirely. But yes, partially.</p> <p>6 Q. What part wasn't reflected in the</p> <p>7 documentation?</p> <p>8 A. The fact that we had 60 days to pay</p> <p>9 down the \$150 million of the note.</p> <p>10 Q. When did you first learn that you had</p> <p>11 60 days to pay that money down?</p> <p>12 A. When we finally got them to close on</p> <p>13 Thursday.</p> <p>14 Q. Did you learn it before the closing</p> <p>15 or after the closing?</p> <p>16 A. Before.</p> <p>17 Q. So --</p> <p>18 A. They wouldn't close unless we agreed</p> <p>19 to it.</p> <p>20 Q. Okay. So is it fair to say that HCRE</p> <p>21 knew of all of the components of the re-trade</p> <p>22 prior to the time it made the decision to enter</p> <p>23 into the loan agreement with KeyBank?</p> <p>24 A. Every party knew. Every party that</p> <p>25 was a part of SE Multifamily knew.</p>	<p>Page 55</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. So every party -- every party that</p> <p>3 was a part of SE Multifamily knew on or before</p> <p>4 September 26, 2018, of the entire scope of the</p> <p>5 re-trade; correct?</p> <p>6 A. Correct.</p> <p>7 Q. And every party to multi --</p> <p>8 SE Multifamily knew on or behalf September 26,</p> <p>9 2018, they not only knew of the re-trade, they</p> <p>10 agreed to it, as much as they didn't like it;</p> <p>11 correct?</p> <p>12 A. That's correct.</p> <p>13 Q. Okay. There was no amendment to the</p> <p>14 KeyBank loan documentation after September 26,</p> <p>15 2018; correct?</p> <p>16 A. There was, just not with us.</p> <p>17 Q. Okay. Who was it with?</p> <p>18 A. Walker & Dunlop.</p> <p>19 Q. And is it fair to say that HCRE had</p> <p>20 full knowledge of the re-trade and all of its</p> <p>21 ramifications at the time that it entered into</p> <p>22 the amended LLC agreement in March of 2019?</p> <p>23 A. Sure.</p> <p>24 Q. You mentioned that there was a note</p> <p>25 in a financial statement that also deviated from</p>
<p>Page 56</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 the 46.06 percent ownership interest for Highland</p> <p>3 in SE Multifamily. Do I have that right?</p> <p>4 A. There was a note about generally the</p> <p>5 -- the ownership percentages, yes.</p> <p>6 Q. And do you recall when that note was</p> <p>7 created?</p> <p>8 A. I think probably February.</p> <p>9 Q. Was -- we'll look at a document,</p> <p>10 maybe it will refresh your -- your recollection.</p> <p>11 I'll just try it now probably.</p> <p>12 Do you recall that in September 2020,</p> <p>13 that HCRE told Barker Viggato, the accounting</p> <p>14 firm, to include the note in its tax returns?</p> <p>15 A. Yes.</p> <p>16 Q. Does that re -- refresh your</p> <p>17 recollection that the note was created in</p> <p>18 September of 2020?</p> <p>19 A. It was a different note.</p> <p>20 Q. Okay. Do you recall what the note</p> <p>21 said?</p> <p>22 A. Which one? The September one or the</p> <p>23 March one?</p> <p>24 Q. I apologize. Fair question. The</p> <p>25 original one that you recall being prepared</p>	<p>Page 57</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 earlier in 2020, do you remember what it --</p> <p>3 A. Yeah, we -- sure. It was an ongoing</p> <p>4 discussion with BH about their ultimate</p> <p>5 ownership.</p> <p>6 Q. And can you describe generally what</p> <p>7 that ongoing discussion was?</p> <p>8 A. Yeah. Given the -- the re-trade,</p> <p>9 given the -- the paydown, given the sales, I</p> <p>10 think BH wanted to know and understand what their</p> <p>11 ultimate ownership would be, and we weren't</p> <p>12 prepared to -- to tell them.</p> <p>13 Q. You weren't prepared to tell them?</p> <p>14 A. Yeah, we weren't prepared to</p> <p>15 negotiate ownership percentages.</p> <p>16 Q. When did HCRE convey that to</p> <p>17 BH Equities?</p> <p>18 A. Consistently from the moment we</p> <p>19 closed.</p> <p>20 Q. So consistently from the end of</p> <p>21 September 2018?</p> <p>22 A. That's right.</p> <p>23 Q. And was BH Equities' ownership</p> <p>24 interest fixed at 6 percent in the Amended and</p> <p>25 Restated LLC Agreement in March of 2019?</p>

<p style="text-align: right;">Page 58</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. Yes.</p> <p>3 Q. And that ownership interest was also</p> <p>4 fixed with full knowledge of the KeyBank</p> <p>5 re-trade; correct?</p> <p>6 A. That's right.</p> <p>7 Q. And that ownership interest never</p> <p>8 changed; is that correct?</p> <p>9 A. As far as I know.</p> <p>10 Q. To the best of your knowledge, HCRE</p> <p>11 never agreed to change BH Equities' 6 percent</p> <p>12 ownership interest in SE Multifamily; correct?</p> <p>13 A. Correct.</p> <p>14 Q. I apologize if -- if I missed it, but</p> <p>15 did you tell me what you recall about the note in</p> <p>16 the financial statement that you believe was</p> <p>17 created in early 2020?</p> <p>18 A. Yeah, just that we -- we didn't have</p> <p>19 final percentages set and that they were seeking</p> <p>20 a larger percentage.</p> <p>21 Q. Did any --</p> <p>22 A. They being BH.</p> <p>23 Q. I apologize. Did the note concern</p> <p>24 any of the members of SE Multifamily other than</p> <p>25 BH Equities?</p>	<p style="text-align: right;">Page 59</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. Yeah, I mean, to the extent that they</p> <p>3 got a larger percentage, everyone would have been</p> <p>4 diluted.</p> <p>5 Q. Is there any other way that the note</p> <p>6 that you're describing would have impacted or</p> <p>7 concerned any member other than BH Equities?</p> <p>8 A. At the time, we were entering COVID,</p> <p>9 we didn't know what was going to happen with the</p> <p>10 remaining assets in -- in the portfolio.</p> <p>11 Q. Is it your understanding that HCRE as</p> <p>12 the manager could adjust the ownership</p> <p>13 percentages of each of SE Multifamily's members</p> <p>14 without anybody else's consent?</p> <p>15 A. No.</p> <p>16 Q. Is it your understanding that a</p> <p>17 change in the ownership percentages would have</p> <p>18 required the consent of all of the members of</p> <p>19 SE Multifamily?</p> <p>20 A. It's typical.</p> <p>21 Q. And not only typical, but that's what</p> <p>22 you understood to be the case; correct?</p> <p>23 A. Correct.</p> <p>24 Q. And that's what you understand to be</p> <p>25 the case today; correct?</p>
<p style="text-align: right;">Page 60</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. Correct.</p> <p>3 Q. And you've never had a conversation</p> <p>4 with anybody in the world where you told somebody</p> <p>5 you thought HCRE could unilaterally change the</p> <p>6 ownership interests of the members in</p> <p>7 SE Multifamily; correct?</p> <p>8 A. No.</p> <p>9 Q. And it's not HCRE's position today</p> <p>10 that it has the unilateral right to change the</p> <p>11 ownership percentages of the members of</p> <p>12 SE Multifamily; correct?</p> <p>13 A. Yeah, that's right.</p> <p>14 Q. Okay. So let's just look at this</p> <p>15 Exhibit A for a minute. The second sentence</p> <p>16 says, "Claimant may be entitled to distributions</p> <p>17 out of SE Multifamily, but such distributions</p> <p>18 have not been made because of the actions or</p> <p>19 inactions of the Debtor."</p> <p>20 Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. Do you know any facts that support</p> <p>23 that assertion? Are you aware of any facts that</p> <p>24 support that assertion?</p> <p>25 A. Yeah, I don't think we could do</p>	<p style="text-align: right;">Page 61</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 anything while the -- while the bankruptcy and</p> <p>3 the stay is in place is my understanding.</p> <p>4 Q. What did Highland do or what did</p> <p>5 Highland fail to do that would have caused</p> <p>6 SE Multifamily to make distributions to HCRE?</p> <p>7 A. Filed bankruptcy.</p> <p>8 Q. And -- and it's HCRE's contention</p> <p>9 that because Highland filed for bankruptcy, that</p> <p>10 HCRE as the manager of SE Multifamily was</p> <p>11 prevented from making distributions to</p> <p>12 SE Multifamily's members. Do I have that right?</p> <p>13 A. Yeah.</p> <p>14 Q. Can you identify the lawyer who</p> <p>15 provided that advice?</p> <p>16 A. No.</p> <p>17 Q. Did HCRE ever consider -- ever</p> <p>18 consider asking the Bankruptcy Court for</p> <p>19 authority to make the distributions?</p> <p>20 A. I don't believe there was any</p> <p>21 distributions to be made at the time. So...</p> <p>22 Q. I'm just trying to understand what</p> <p>23 this sentence means. If there's no distributions</p> <p>24 to be made, why is this sent -- why -- do you</p> <p>25 know why this sentence is included in HCRE's</p>

<p style="text-align: right;">Page 62</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Proof of Claim?</p> <p>3 A. I don't know. I didn't draft it.</p> <p>4 Q. Okay. Other than the fact that</p> <p>5 Highland filed for bankruptcy, do you have any</p> <p>6 basis to understand the assertion that's set</p> <p>7 forth in this sentence that we're looking at? Do</p> <p>8 you know why it's there?</p> <p>9 A. No, but I think that's a -- that's a</p> <p>10 pretty big reason.</p> <p>11 Q. Right. But despite the reason, to</p> <p>12 the best of your knowledge, HCRE never did</p> <p>13 anything to address that reason; correct?</p> <p>14 A. Yeah. That's right.</p> <p>15 Q. And you never -- you never instructed</p> <p>16 anybody to try to address the problem that's</p> <p>17 identified in that sentence; correct?</p> <p>18 A. Well, I think we are trying to add-</p> <p>19 -- I think we tried to address the -- the problem</p> <p>20 by filing the Proof of Claim. That is preserving</p> <p>21 the right to -- to make a distribution.</p> <p>22 Q. Well, you know, as a matter of fact,</p> <p>23 that SE Multifamily has made distributions since</p> <p>24 Highland filed for bankruptcy; correct?</p> <p>25 A. I think it's paid down debt.</p>	<p style="text-align: right;">Page 63</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. And you specific- -- and you are the</p> <p>3 person who authorized the payment to the members</p> <p>4 in order to pay down the debt; correct?</p> <p>5 A. That's correct.</p> <p>6 Q. So what is the basis for HCRE's</p> <p>7 contention that SE Multifamily could make</p> <p>8 distributions to pay down debt but could not make</p> <p>9 any other distributions?</p> <p>10 A. I don't think we believe that the</p> <p>11 distribution percentages were accurate.</p> <p>12 Q. When did you learn that?</p> <p>13 A. From the time of we entered into the</p> <p>14 agreement.</p> <p>15 Q. So you knew the moment that you</p> <p>16 entered into the agreement that the percentages</p> <p>17 were inaccurate? And I'm asking you now in your</p> <p>18 capacity as HCRE's corporate representative.</p> <p>19 A. Yeah, I think ultimately the intent</p> <p>20 was that the percentages would change based upon</p> <p>21 how the transaction unfolded, and the KeyBank</p> <p>22 re-trade threw that in -- into a tailspin.</p> <p>23 Q. The -- the KeyBank re-trade occurred</p> <p>24 five or six months before you signed -- before</p> <p>25 HCRE entered into the Amended and Restated LLC</p>
<p style="text-align: right;">Page 64</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Agreement; correct?</p> <p>3 A. Correct.</p> <p>4 Q. So you had full knowledge of that at</p> <p>5 the time HCRE voluntarily entered into the</p> <p>6 amended and restated agreement; correct?</p> <p>7 A. Correct.</p> <p>8 Q. So did HCRE enter into an agreement</p> <p>9 that it knew was wrong?</p> <p>10 A. No.</p> <p>11 Q. Did HCRE believe the agreement was</p> <p>12 true and accurate at the time it signed the</p> <p>13 agreement?</p> <p>14 A. Yes.</p> <p>15 Q. So it knew it -- it knew all about</p> <p>16 the KeyBank re-trade when it signed the</p> <p>17 agreement; correct?</p> <p>18 A. Correct.</p> <p>19 Q. And HCRE signed the agreement</p> <p>20 believing that it was true and accurate and</p> <p>21 reflected the parties' intent when it signed it</p> <p>22 in March of 2019; correct?</p> <p>23 A. Except that we made a mistake that we</p> <p>24 couldn't amend it later.</p> <p>25 Q. What mistake are you referring to?</p>	<p style="text-align: right;">Page 65</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. That the agreement should -- should</p> <p>3 have provided that we could amend it to -- to</p> <p>4 make amendments as -- as the transaction</p> <p>5 unfolded, as assets were sold.</p> <p>6 Q. Who made that mistake?</p> <p>7 A. I think everyone.</p> <p>8 Q. When did you realize that you made</p> <p>9 that mistake?</p> <p>10 A. Two weeks before the bankruptcy was</p> <p>11 filed.</p> <p>12 Q. And in the two weeks before the</p> <p>13 bankruptcy was filed, did HCRE make any effort to</p> <p>14 amend the agreement?</p> <p>15 A. No. It should have.</p> <p>16 Q. So there's only three members to the</p> <p>17 SE Multifamily entity; correct?</p> <p>18 A. Correct.</p> <p>19 Q. And that would be Highland; correct?</p> <p>20 A. Yes.</p> <p>21 Q. And HCRE; correct?</p> <p>22 A. Correct.</p> <p>23 Q. And BH Equities; correct?</p> <p>24 A. Correct.</p> <p>25 Q. And prior to the petition date,</p>

<p>Page 66</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Mr. Dondero controlled both Highland and HCRE;</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 Q. Did anybody acting on behalf of</p> <p>6 Highland or HCRE ask BH Equities at any time</p> <p>7 prior to the petition date whether they would be</p> <p>8 willing to amend the ownership percentages set</p> <p>9 forth in the amended and restated agreement?</p> <p>10 A. I think they were asking for</p> <p>11 amendment the entire time since the closing back</p> <p>12 in September of 2018.</p> <p>13 MR. MORRIS: I move to strike.</p> <p>14 Q. (BY MR. MORRIS) From the time that</p> <p>15 you learned that this provision was amended --</p> <p>16 withdrawn.</p> <p>17 I believe you testified that you</p> <p>18 realized approximately two weeks before the</p> <p>19 petition date that the agreement didn't have a</p> <p>20 provision that permitted it to be amended. Do I</p> <p>21 have that right?</p> <p>22 A. No. At the time that we got Highland</p> <p>23 off the loan -- the KeyBank loan, we should have</p> <p>24 amended the -- the LLC agreement.</p> <p>25 Q. But -- but nobody acting on behalf of</p>	<p>Page 67</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 HCRE did that; correct?</p> <p>3 A. Unfortunately not.</p> <p>4 Q. And nobody on behalf of HCRE made any</p> <p>5 attempt to do that; correct?</p> <p>6 A. I think we -- and I'm speaking as a</p> <p>7 corporate representative -- were hopeful that the</p> <p>8 issues creating the bankruptcy's ultimate filing</p> <p>9 would resolve themselves, and that never</p> <p>10 happened.</p> <p>11 MR. MORRIS: I move to strike.</p> <p>12 Q. (BY MR. MORRIS) Did anybody acting on</p> <p>13 behalf of HCRE take any steps prior to the</p> <p>14 petition date to amend the agreement in order to</p> <p>15 adjust the membership interest allocation?</p> <p>16 A. Can you repeat the first part? Did</p> <p>17 any who --</p> <p>18 Q. Sure. Did anybody acting on behalf</p> <p>19 of HCRE make any effort or take any step prior to</p> <p>20 the petition date to amend the Amended and</p> <p>21 Restated LLC Agreement to adjust the ownership</p> <p>22 allocation?</p> <p>23 A. I -- I asked our internal legal team</p> <p>24 to review and conduct all reverse due diligence</p> <p>25 that was necessary amongst all of our real estate</p>
<p>Page 68</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 agreements for provisions such as cross defaults,</p> <p>3 what have you, prior to filing, and that didn't</p> <p>4 happen.</p> <p>5 MR. MORRIS: Okay. I'm going to</p> <p>6 move to strike and ask you to just -- and</p> <p>7 we'll take a break in a minute, sir -- just</p> <p>8 listen carefully.</p> <p>9 Q. (BY MR. MORRIS) Did anybody acting on</p> <p>10 behalf of HCRE make any effort or take any step</p> <p>11 prior to the petition date to adjust the -- the</p> <p>12 ownership allocation of SE Multifamily?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. What steps were taken to do</p> <p>15 that?</p> <p>16 A. I specifically requested that our</p> <p>17 internal legal team review all of our real estate</p> <p>18 agreements, including this one, to determine what</p> <p>19 consequences there would be as a result of a</p> <p>20 bankruptcy filing, if it was -- could be</p> <p>21 massively contagious and I was concerned about</p> <p>22 it.</p> <p>23 Q. Did HCRE come to any view as to what</p> <p>24 Highland's ownership interest should be prior to</p> <p>25 the petition date?</p>	<p>Page 69</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. Because it received \$1.14 million</p> <p>3 60 days following the closing of the transaction,</p> <p>4 I thought it should have been less. I don't know</p> <p>5 what percentage less, but it should have been</p> <p>6 less.</p> <p>7 Q. Did you instruct anybody to draft an</p> <p>8 amendment to the Amended and Restated LLC</p> <p>9 Agreement to reflect the new -- newly formulated</p> <p>10 allocation of ownership interests?</p> <p>11 A. No. There wasn't any reason to --</p> <p>12 Q. All right.</p> <p>13 A. -- prior to the petition date.</p> <p>14 Q. Right. Did -- did anybody acting on</p> <p>15 behalf of HCRE ever inform BH Equities that they</p> <p>16 believed there was a mistake and therefore wanted</p> <p>17 to amend the agreement to reflect a different</p> <p>18 allocation of membership interests?</p> <p>19 A. No. I don't know why they would</p> <p>20 care.</p> <p>21 Q. But you would need their consent to</p> <p>22 make a change to the allocation; correct?</p> <p>23 A. They weren't -- I don't think they</p> <p>24 were a part of the first LLC agreement; right?</p> <p>25 Q. No. But that was amended and</p>

<p style="text-align: right;">Page 70</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 restated --</p> <p>3 A. They were --</p> <p>4 Q. -- about the second one; correct?</p> <p>5 A. Yes.</p> <p>6 Q. So you would have needed HCRE -- you</p> <p>7 understood that in order to amend the Amended and</p> <p>8 Restated LLC Agreement, you would have had to</p> <p>9 obtained BH Equities' consent; correct?</p> <p>10 A. Unless it was from September 2018 to</p> <p>11 March of 2019.</p> <p>12 Q. Sir, the amended and restated</p> <p>13 agreement was effective retroactively to</p> <p>14 August 23, 20 -- 2018. Are you aware of that?</p> <p>15 A. I am. But why do I need BH's consent</p> <p>16 if we would have made an amendment to the</p> <p>17 allocation percentages in December of 2018?</p> <p>18 Q. Well, first of all, you didn't do</p> <p>19 that; correct?</p> <p>20 A. Well -- well, no. But your -- your</p> <p>21 question was hypothetical, too, I thought. So...</p> <p>22 Q. It's -- it's actually not. I'm</p> <p>23 asking for a specific fact.</p> <p>24 At any time between March 2019 and</p> <p>25 the petition date, did anybody acting on behalf</p>	<p style="text-align: right;">Page 71</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 of HCRE ever tell BH Equities that you wanted to</p> <p>3 adjust the membership interests set forth in the</p> <p>4 agreement?</p> <p>5 A. Highland's percentage? Or just the</p> <p>6 percentages in general?</p> <p>7 Q. Any percentage.</p> <p>8 A. Yeah, it was -- it was an ongoing</p> <p>9 conversation about their percentage, their</p> <p>10 promote, if they got a promote, what the</p> <p>11 waterfall would look like, it was a -- it was a</p> <p>12 conversation that brought up on -- almost on a</p> <p>13 monthly basis.</p> <p>14 Q. Correct. Other than the consequences</p> <p>15 that would have resulted from an adjustment to</p> <p>16 BH Equities' interests, did anybody acting on</p> <p>17 behalf of HCRE ever tell BH Equities that it</p> <p>18 wanted to adjust the percentages for Highland and</p> <p>19 HCRE?</p> <p>20 A. No.</p> <p>21 MR. MORRIS: All right. Let's take</p> <p>22 a break now then. It's 10:51 your time.</p> <p>23 Let's just come back at 11:00 if we may.</p> <p>24 THE WITNESS: Sure.</p> <p>25 MR. MORRIS: Thank you,</p>
<p style="text-align: right;">Page 72</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Mr. McGraner.</p> <p>3 THE VIDEOGRAPHER: Okay. The time</p> <p>4 is 10:53 a.m. and we are going off the</p> <p>5 record.</p> <p>6 (Break from 10:52 a.m. to 11:01 a.m.)</p> <p>7 THE VIDEOGRAPHER: The time is</p> <p>8 11:03 a.m. and we are back on the record.</p> <p>9 MR. MORRIS: Bill, Mr. McGraner,</p> <p>10 are we ready?</p> <p>11 MR. GAMEROS: Yeah, we've been</p> <p>12 ready.</p> <p>13 THE VIDEOGRAPHER: Okay. We were</p> <p>14 on the record, Mr. Morris.</p> <p>15 MR. MORRIS: Okay. Let's get</p> <p>16 started.</p> <p>17 THE VIDEOGRAPHER: We -- we started</p> <p>18 a minute ago, sir.</p> <p>19 MR. MORRIS: Couldn't really start</p> <p>20 without me.</p> <p>21 THE VIDEOGRAPHER: No, I'm sorry.</p> <p>22 You said to go. I'm sorry. We're on the</p> <p>23 record.</p> <p>24 MR. MORRIS: Okay.</p> <p>25 Q. (BY MR. MORRIS) Mr. McGraner, let's</p>	<p style="text-align: right;">Page 73</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 step back a little bit and just, you know, get</p> <p>3 some context to some of the issues that we were</p> <p>4 talking about.</p> <p>5 You're familiar with the term</p> <p>6 "Project Unicorn"; is that right?</p> <p>7 A. Yes.</p> <p>8 Q. And do you have an understanding of</p> <p>9 what that term means?</p> <p>10 A. I do.</p> <p>11 Q. What's your understanding of the term</p> <p>12 "Project Unicorn"?</p> <p>13 A. A term of art that was authored by</p> <p>14 CBRE, the -- the brokerage firm.</p> <p>15 Q. And what -- what does it refer to, if</p> <p>16 you know?</p> <p>17 A. I can tell you what I think they</p> <p>18 think it refers to.</p> <p>19 Q. Sure.</p> <p>20 A. It was a portfolio of '80s and '90s</p> <p>21 vintage multi-family assets, all garden style in</p> <p>22 attractive Sunbelt markets that exhibited</p> <p>23 value-added potential, renovation, rehab</p> <p>24 potential and did so on scale. So there was</p> <p>25 assets and clusters in markets that were -- were</p>

<p>Page 74</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 geographically attractive.</p> <p>3 Q. And do you know how this was brought</p> <p>4 to the attention of HCRE?</p> <p>5 A. I do.</p> <p>6 Q. And how was it brought to HCRE's</p> <p>7 attention?</p> <p>8 A. We -- we being NexPoint Real Estate</p> <p>9 received inbound portfolio solicitations from all</p> <p>10 the major brokerage firms. This one in</p> <p>11 particular was -- was one that we sourced out of</p> <p>12 the local office here in Dallas.</p> <p>13 Q. And did you --</p> <p>14 A. The local CBRE office.</p> <p>15 Q. Okay. And did you play any</p> <p>16 particular role in the execution of Project</p> <p>17 Unicorn?</p> <p>18 A. I did.</p> <p>19 Q. And can you describe for me just</p> <p>20 generally what your role was?</p> <p>21 A. You could say I was the quarterback</p> <p>22 of the business plan and created the business</p> <p>23 plan.</p> <p>24 Q. Okay. And was the creation of</p> <p>25 SE Multifamily one of the elements of executing</p>	<p>Page 75</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Project Unicorn?</p> <p>3 A. It was.</p> <p>4 Q. Okay. And do you recall that in</p> <p>5 August of 2018, a -- a -- an original LLC</p> <p>6 agreement was created for SE Multifamily?</p> <p>7 A. Sure.</p> <p>8 Q. And did you participate in the</p> <p>9 creation of that document?</p> <p>10 A. The creation, no.</p> <p>11 Q. Did you review it before it was</p> <p>12 signed?</p> <p>13 A. Generally, yes.</p> <p>14 Q. Do you have any reason to believe</p> <p>15 that the document didn't reflect the intent of</p> <p>16 the parties to that agreement?</p> <p>17 A. No.</p> <p>18 Q. Highland was a party to that</p> <p>19 agreement; correct?</p> <p>20 A. Yes.</p> <p>21 Q. Do you have an understanding as to</p> <p>22 why Highland became a signatory to the original</p> <p>23 LLC agreement for SE Multifamily?</p> <p>24 A. Sorry. Can you say that again?</p> <p>25 Q. Sure. Do -- do you know why Highland</p>
<p>Page 76</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 was a party to the original SE Multifamily LLC</p> <p>3 agreement?</p> <p>4 A. Yes, I do.</p> <p>5 Q. And why was Highland a party to that</p> <p>6 particular agreement?</p> <p>7 A. It originally was going to pledge</p> <p>8 assets as part of the -- the collateral package,</p> <p>9 but later it -- it didn't because it didn't have</p> <p>10 any assets to pledge that were unencumbered.</p> <p>11 Q. And -- and when did that become clear</p> <p>12 -- when did you learn that Highland didn't have</p> <p>13 any unencumbered assets?</p> <p>14 A. It was late -- late in the process.</p> <p>15 Probably right before closing.</p> <p>16 Q. So -- so Jim Dondero didn't know</p> <p>17 prior to the time he signed the original LLC</p> <p>18 agreement that Highland didn't have any</p> <p>19 unencumbered assets, is that your testimony?</p> <p>20 A. I don't think it's a -- a matter of</p> <p>21 know -- of knowledge. It's a matter of --</p> <p>22 Q. If you -- I'm sorry.</p> <p>23 A. Yeah. It's a matter of what capital</p> <p>24 is available at the time we had to close, and it</p> <p>25 didn't -- at that time, it didn't have any</p>	<p>Page 77</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 capital.</p> <p>3 Q. Did it have capital at the time the</p> <p>4 original LLC agreement was signed six weeks</p> <p>5 earlier?</p> <p>6 A. That -- that's what I'm referring to,</p> <p>7 that time, time of closing.</p> <p>8 Q. Is it your understanding that HCRE</p> <p>9 knew prior to the time it signed the original LLC</p> <p>10 agreement that Highland didn't have any</p> <p>11 unencumbered assets?</p> <p>12 A. Yeah, that's what I was told by</p> <p>13 Dave Klos.</p> <p>14 Q. And notwithstanding the knowledge</p> <p>15 that Highland had no unencumbered assets, the</p> <p>16 decision was still made to include Highland in</p> <p>17 the SE Multifamily LLC agreement; correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Nobody said, Well, since Highland has</p> <p>20 no unencumbered assets, there's no reason for</p> <p>21 them to participate in this transaction; correct?</p> <p>22 A. I -- I think it's a little bit more</p> <p>23 complicated than that.</p> <p>24 Q. Did anybody --</p> <p>25 A. Because it's --</p>

<p style="text-align: right;">Page 78</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. Did anybody suggest -- let me just</p> <p>3 finish.</p> <p>4 Do you have any recollection of</p> <p>5 anybody suggesting that Highland should not be a</p> <p>6 member of SE Multifamily given the fact that it</p> <p>7 didn't have unencumbered assets?</p> <p>8 A. No.</p> <p>9 Q. Can you tell me why Highland was</p> <p>10 included in the SE Multifamily original LLC</p> <p>11 agreement?</p> <p>12 A. Because we thought it was going to</p> <p>13 pledge assets.</p> <p>14 Q. But you knew it wasn't going to do</p> <p>15 that before the agreement was signed; correct?</p> <p>16 A. Yes. But, again, we got re-traded by</p> <p>17 KeyBank and wanted the -- the -- as much</p> <p>18 flexibility as possible to come up with</p> <p>19 \$150 million from any source possible.</p> <p>20 Q. Okay. I want to just keep your</p> <p>21 attention focused on the period of time prior to</p> <p>22 August 23, 2018, when the SE Multifamily</p> <p>23 agreement was signed. Okay?</p> <p>24 A. Okay.</p> <p>25 Q. At that time, you and Mr. Dondero</p>	<p style="text-align: right;">Page 79</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 were aware that Highland did not have any</p> <p>3 meaningful unencumbered assets. Do I have that</p> <p>4 right?</p> <p>5 A. That's right.</p> <p>6 Q. And nevertheless, despite having that</p> <p>7 knowledge, you and Mr. Dondero decided that</p> <p>8 Highland would nevertheless be a member of</p> <p>9 SE Multifamily; correct?</p> <p>10 A. Yes, we needed the ultimate</p> <p>11 flexibility under the circumstances.</p> <p>12 Q. Was there any other reason than a</p> <p>13 desire for ultimate flexibility that Highland was</p> <p>14 made a member of SE Multifamily that you can</p> <p>15 recall?</p> <p>16 A. Yeah, purportedly to provided tax</p> <p>17 benefits also.</p> <p>18 Q. And why are you using the word</p> <p>19 "purportedly"?</p> <p>20 A. Because I'm not sure it did.</p> <p>21 Q. Was that the intent?</p> <p>22 A. I think it was -- it was a -- a</p> <p>23 factor.</p> <p>24 Q. But was that -- was the intent --</p> <p>25 when the LLC agreement was signed, was the intent</p>
<p style="text-align: right;">Page 80</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 that Highland would provide tax benefits?</p> <p>3 A. Among other things like providing, to</p> <p>4 the extent it could, sell assets to provide</p> <p>5 capital to pay down \$150 million in 60 days.</p> <p>6 Q. But you didn't know that the -- did</p> <p>7 the re-trade occur before or after the original</p> <p>8 LLC agreement was signed for SE Multifamily? And</p> <p>9 just to give you a point of reference on the</p> <p>10 calendar, that agreement was signed on</p> <p>11 August 23rd, and the KeyBank loan closed on</p> <p>12 September 26th.</p> <p>13 So with that time frame in mind, did</p> <p>14 the re-trade occur before or after the LLC</p> <p>15 agreement was signed, if you can recall?</p> <p>16 A. It was signed -- or the re-trade</p> <p>17 occurred after, but it didn't mean that we didn't</p> <p>18 want the flexibility.</p> <p>19 Q. Okay. So let's go back to the tax</p> <p>20 benefits. What tax benefits were expected from</p> <p>21 Highland?</p> <p>22 A. I don't know.</p> <p>23 Q. Did you ever ask anybody what tax</p> <p>24 benefits there were?</p> <p>25 A. I didn't.</p>	<p style="text-align: right;">Page 81</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. Did you ever -- anybody ever attempt</p> <p>3 to quantify what the tax benefits were, to the</p> <p>4 best of your knowledge?</p> <p>5 A. No. I wished they would have.</p> <p>6 Q. What's the -- what's the basis for</p> <p>7 your belief that one of the reasons that Highland</p> <p>8 was made a member of SE Multifamily was that</p> <p>9 there were expected tax benefits?</p> <p>10 A. That's what I was told.</p> <p>11 Q. Who told you that?</p> <p>12 A. Our tax team.</p> <p>13 Q. Who's on the tax -- who's on the tax</p> <p>14 team that told you that?</p> <p>15 A. Mark Patrick, Rick Swadley.</p> <p>16 Q. Did they tell you what tax benefits</p> <p>17 would enure?</p> <p>18 A. No.</p> <p>19 Q. Did they tell you who the beneficiary</p> <p>20 was of the tax benefits?</p> <p>21 A. No.</p> <p>22 Q. Did you ask?</p> <p>23 A. I didn't.</p> <p>24 Q. Did you ever discuss with Mr. Dondero</p> <p>25 why Highland was being included in</p>

<p style="text-align: right;">Page 82</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 SE Multifamily?</p> <p>3 A. No.</p> <p>4 Q. Did you ever ask him?</p> <p>5 A. No.</p> <p>6 Q. Are you aware of any reason that</p> <p>7 Highland was included in SE Multifamily other</p> <p>8 than the purported tax benefits and the, you</p> <p>9 know, collateral issue that you discussed, any</p> <p>10 other reasons?</p> <p>11 A. No.</p> <p>12 Q. Do you know who made the decision to</p> <p>13 include Highland as a member of SE Multifamily in</p> <p>14 August 2018?</p> <p>15 A. Jim.</p> <p>16 Q. But you don't recall having any</p> <p>17 discussions as to why he made that decision;</p> <p>18 correct?</p> <p>19 A. I think we were deferential.</p> <p>20 Q. You don't recall having any</p> <p>21 discussions with Mr. Dondero about why he made</p> <p>22 that decision; correct?</p> <p>23 A. I -- I believe I answered that but</p> <p>24 I'll -- I'll answer it again. Because of the</p> <p>25 flexibility for capital if we needed it under the</p>	<p style="text-align: right;">Page 83</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 circumstances and purported tax benefit.</p> <p>3 MR. MORRIS: I move to strike.</p> <p>4 Q. (BY MR. MORRIS) I just want to know</p> <p>5 if you had any discussions with Mr. Dondero</p> <p>6 concerning his decision to include Highland in</p> <p>7 SE Multifamily, did you talk to him about it?</p> <p>8 A. Yes. The same answer. I mean, I</p> <p>9 think we had a discussion among -- to include</p> <p>10 the -- he wanted to include them because of</p> <p>11 capital flexibility and purported tax benefits.</p> <p>12 Q. So who -- who was part of the</p> <p>13 conversation that you just described?</p> <p>14 A. It was a one-off conversation between</p> <p>15 he and I.</p> <p>16 Q. Did it take place in person or on the</p> <p>17 phone or in some other manner?</p> <p>18 A. I -- I don't recall.</p> <p>19 Q. Are there any notes of the</p> <p>20 communication on this topic about why Highland</p> <p>21 was included in SE Multifamily?</p> <p>22 A. Not that I'm aware of.</p> <p>23 Q. If Highland had no unencumbered</p> <p>24 assets, how could they provide capital</p> <p>25 flexibility?</p>
<p style="text-align: right;">Page 84</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. They could sell assets, like they</p> <p>3 could sell stock, need cash. Just because</p> <p>4 they're encumbered doesn't mean they don't have</p> <p>5 value over and above the debt.</p> <p>6 Q. And that value over and above the</p> <p>7 debt was one of the reasons why Mr. Dondero made</p> <p>8 the decision to include Highland; correct?</p> <p>9 A. The potential to sell assets was one</p> <p>10 of them, to have capital flexibility was a</p> <p>11 reason, yes.</p> <p>12 Q. Did HCRE have the ability to close on</p> <p>13 the KeyBank loan based on its own financial</p> <p>14 wherewithal?</p> <p>15 A. No.</p> <p>16 Q. Did HCRE need Highland to be a</p> <p>17 co-borrower under the KeyBank loan in order to</p> <p>18 close the transaction?</p> <p>19 A. Absolutely not.</p> <p>20 Q. Did KeyBank require Highland to be</p> <p>21 added as a guarantor under the KeyBank loan as a</p> <p>22 condition to closing?</p> <p>23 A. They're not a guarantor.</p> <p>24 Q. They're a borrower; correct?</p> <p>25 A. Yeah. You said guarantor, though.</p>	<p style="text-align: right;">Page 85</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. I apologize. I appreciate the</p> <p>3 distinction. Did KeyBank require --</p> <p>4 A. It's a big difference.</p> <p>5 Q. Did KeyBank require Highland to be</p> <p>6 added as a co-borrower under the KeyBank loan?</p> <p>7 A. No. I mean, I think they took</p> <p>8 everything they could get at the time.</p> <p>9 Q. And is -- is Highland one of the</p> <p>10 things that Mr. Dondero offered in order to close</p> <p>11 the transaction?</p> <p>12 A. I think it was all -- it was already</p> <p>13 contemplated.</p> <p>14 Q. What was already contemplated?</p> <p>15 A. For the -- their -- their inclusion</p> <p>16 as a co-borrower be -- because of the</p> <p>17 aforementioned reasons for capital flexibility.</p> <p>18 Q. So to the best of your understanding,</p> <p>19 Mr. Dondero made the decision to include Highland</p> <p>20 as a co-borrower under the KeyBank loan because</p> <p>21 he thought that would provide additional capital</p> <p>22 flexibility; correct?</p> <p>23 A. And that KeyBank insisted on.</p> <p>24 Q. KeyBank insisted on Highland being</p> <p>25 included as a co-borrower; correct?</p>

<p>Page 86</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. Yeah, at -- at the ultimate finish</p> <p>3 line, yeah.</p> <p>4 Q. And HCRE and Mr. Dondero agreed to</p> <p>5 include Highland as a co-borrower; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And HCRE and Mr. Dondero agreed to</p> <p>8 include Highland as a co-borrower in order to</p> <p>9 respond to KeyBank's demand; correct?</p> <p>10 A. Demand? Sorry, what -- what was the</p> <p>11 reason?</p> <p>12 Q. Demand to include Highland as a</p> <p>13 borrower.</p> <p>14 A. It's a -- it's a little bit more</p> <p>15 complicated than that.</p> <p>16 Q. It may or may not be, but it's kind</p> <p>17 of a simple question. To the best of your</p> <p>18 knowledge and understanding, HCRE and Mr. Dondero</p> <p>19 agreed to include Highland as a co-borrower in</p> <p>20 response to KeyBank's demand; correct?</p> <p>21 A. They -- they demanded a lot from</p> <p>22 everyone.</p> <p>23 Q. And one of the things they demanded</p> <p>24 was that Highland would be a borrower; correct?</p> <p>25 A. A part -- sure, a portion or a</p>	<p>Page 87</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 partial -- partial demand, yeah.</p> <p>3 Q. That was -- let's just clean this up</p> <p>4 a little bit.</p> <p>5 One of the demands that -- withdrawn.</p> <p>6 One of the conditions that KeyBank</p> <p>7 placed on the closing of the loan was that</p> <p>8 Highland be added as a co-borrower; correct?</p> <p>9 A. Yeah, I don't think it was a material</p> <p>10 condition, but it was a condition there.</p> <p>11 Q. It was a condition; correct?</p> <p>12 A. Yes, but not a material one.</p> <p>13 MR. MORRIS: I move to strike the</p> <p>14 reference to materiality.</p> <p>15 Q. (BY MR. MORRIS) KeyBank demanded that</p> <p>16 Highland be added as a co-borrower; correct?</p> <p>17 A. No. It was already a co-borrower.</p> <p>18 Q. When did it become a co-borrower?</p> <p>19 A. It was -- it was -- it was all --</p> <p>20 always contemplated to be a co-borrower.</p> <p>21 Q. And that's because KeyBank insisted</p> <p>22 on that; correct?</p> <p>23 A. At first, no.</p> <p>24 Q. So Mr. Dondero voluntarily included</p> <p>25 Highland as a co-borrower at first?</p>
<p>Page 88</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. Yes.</p> <p>3 Q. And did Mr. Dondero try to remove</p> <p>4 Highland as a co-borrower thereafter?</p> <p>5 A. Yeah, we -- we did when we thought</p> <p>6 that there was going to be a petition filing.</p> <p>7 Q. But KeyBank would not agree; correct?</p> <p>8 A. No, they agreed to remove Highland as</p> <p>9 a borrower.</p> <p>10 Q. You're -- you're -- maybe it's my</p> <p>11 questioning, sir. But we're talking about</p> <p>12 September 2018, not October 2019.</p> <p>13 A. Got it. I apologize.</p> <p>14 Q. Yeah. So going back to the period</p> <p>15 leading up to the closing of the KeyBank loan in</p> <p>16 September 2018, did KeyBank require Highland to</p> <p>17 be added as a borrower -- as a co-borrower?</p> <p>18 A. It was already a co-borrower.</p> <p>19 Q. And that's because Mr. Dondero made</p> <p>20 the decision to add Highland as a co-borrower;</p> <p>21 correct?</p> <p>22 A. That's right, yeah.</p> <p>23 Q. And Mr. Dondero made that decision</p> <p>24 because he thought it would provide capital</p> <p>25 flexibility; correct?</p>	<p>Page 89</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. That's right.</p> <p>3 Q. And by that -- by adding Highland,</p> <p>4 did -- was -- was the idea that that would</p> <p>5 increase the likelihood that the loan would</p> <p>6 close?</p> <p>7 A. No.</p> <p>8 Q. Then why did Mr. Dondero decide to</p> <p>9 add Highland as a co-borrower to the KeyBank</p> <p>10 loan?</p> <p>11 A. For capital flexibility and tax</p> <p>12 efficiency.</p> <p>13 Q. Okay. How does including Highland as</p> <p>14 a co-borrower in the KeyBank loan provide capital</p> <p>15 flexibility?</p> <p>16 A. I think -- I think you want symmetry</p> <p>17 with your LLC agreement, and everyone in the LLC</p> <p>18 agreement was providing or pledging assets other</p> <p>19 than Highland, frankly. So that's why it be --</p> <p>20 that's why it became a co-borrower.</p> <p>21 Q. Which came first: The decision to</p> <p>22 add Highland to the LLC agreement or the decision</p> <p>23 to make Highland a co-borrower under the KeyBank</p> <p>24 loan?</p> <p>25 A. You know, I don't -- I don't recall.</p>

<p style="text-align: right;">Page 90</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 I don't know which came first.</p> <p>3 Q. In the one-off conversation that you</p> <p>4 had with Mr. Dondero, did he describe for you in</p> <p>5 any way that you can recall what the tax benefits</p> <p>6 would be by adding Highland to the SE Multifamily</p> <p>7 agreement?</p> <p>8 A. No.</p> <p>9 Q. Did you ask him?</p> <p>10 A. No. I don't think he knew, either.</p> <p>11 Q. So neither you nor Mr. Dondero knew</p> <p>12 what the tax benefits were, but yet that was one</p> <p>13 of the reasons that you made the decision to add</p> <p>14 Highland to the original LLC agreement. Do I</p> <p>15 have that right?</p> <p>16 A. You have that right.</p> <p>17 Q. And to the best of your knowledge,</p> <p>18 neither you nor Mr. Dondero undertook any</p> <p>19 diligence or investigation to determine the</p> <p>20 nature of the tax benefits before the decision</p> <p>21 was made to sign the original LLC agreement for</p> <p>22 SE Multifamily; correct?</p> <p>23 A. Correct.</p> <p>24 Q. Other than the one-off conversation</p> <p>25 that you've described with Mr. Dondero, do you --</p>	<p style="text-align: right;">Page 91</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 do you recall having any discussions with anybody</p> <p>3 else in the world about why Highland was made a</p> <p>4 member of SE Multifamily?</p> <p>5 A. No.</p> <p>6 Q. Other than the one-off conversation</p> <p>7 that you described with Mr. Dondero, do you</p> <p>8 recall asking anybody in the world why Highland</p> <p>9 was being made a party to the SE Multifamily</p> <p>10 agreement?</p> <p>11 A. No.</p> <p>12 Q. Did you have any understanding that</p> <p>13 Highland's inclusion as a member of</p> <p>14 SE Multifamily would have a positive impact on</p> <p>15 HCRE's tax burden?</p> <p>16 A. Did I -- I have -- sorry -- the first</p> <p>17 part, did I have a what?</p> <p>18 Q. Yeah. You've mentioned purported tax</p> <p>19 benefits; right?</p> <p>20 A. Right.</p> <p>21 Q. Okay. Who was going to be -- be the</p> <p>22 beneficiary of the tax benefits? Did you know?</p> <p>23 A. No.</p> <p>24 Q. Did you know if it was going to be</p> <p>25 HCRE?</p>
<p style="text-align: right;">Page 92</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. No.</p> <p>3 Q. Did you ask anybody if HCRE was going</p> <p>4 to benefit from the tax benefits that Highland's</p> <p>5 inclusion was going to provide?</p> <p>6 A. No.</p> <p>7 Q. Did you -- did you -- did you ask</p> <p>8 anybody if SE Multifamily was going to be the</p> <p>9 beneficiary of these tax benefits?</p> <p>10 A. No.</p> <p>11 Q. Did SE Multifamily rely on Highland's</p> <p>12 human resources to execute Project Unicorn?</p> <p>13 A. You mean their personnel?</p> <p>14 Q. Yeah.</p> <p>15 A. Other than the tax piece, no.</p> <p>16 Q. So -- so Highland's tax department is</p> <p>17 the one who supported this transaction; correct?</p> <p>18 A. When you say "the one," that there</p> <p>19 was a -- a large, large effort, teams of people</p> <p>20 internally and externally, bankers internally,</p> <p>21 banker -- or lawyers internally, lawyers</p> <p>22 externally.</p> <p>23 Q. Were there any --</p> <p>24 A. -- and there's brokers.</p> <p>25 Q. Were there any internal lawyers --</p>	<p style="text-align: right;">Page 93</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 any lawyers employed by Highland who participated</p> <p>3 in Project Unicorn?</p> <p>4 A. Everyone in the firm, Highland and</p> <p>5 NexPoint knew about it. Tim Courmoyer, who I</p> <p>6 believe works for -- for Highland still, was in a</p> <p>7 lot of these conversations. Mr. Sergent was</p> <p>8 aware of them also.</p> <p>9 Q. It's interesting that the only two</p> <p>10 people you identify are people still employed by</p> <p>11 Highland. Is that a coincidence?</p> <p>12 A. No. I -- I also mentioned that it</p> <p>13 was our team -- our real estate team and the tax</p> <p>14 team at Highland.</p> <p>15 Q. What role did Mr. Courmoyer play?</p> <p>16 A. He was Highland corporate counsel; so</p> <p>17 I assumed he represented Highland.</p> <p>18 Q. I don't want your assumptions, sir.</p> <p>19 Tell me based on your personal knowledge, what do</p> <p>20 you understand that Mr. Courmoyer did in</p> <p>21 connection with Project Unicorn?</p> <p>22 A. I believe he took place in the</p> <p>23 conversations around the agreements -- the LLC</p> <p>24 agreements, eventually the loan agreements.</p> <p>25 Q. He took place in conversations.</p>

<p>Page 94</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Anything else you got?</p> <p>3 A. He helped with the allocations of --</p> <p>4 the compliance allocations on where assets were</p> <p>5 ultimately held.</p> <p>6 Q. Does HCRE contend that Mr. Courmoyer</p> <p>7 made any mistakes in any of the services he</p> <p>8 provided in connection with Project Unicorn?</p> <p>9 A. No.</p> <p>10 Q. Did Mr. Courmoyer play any role in</p> <p>11 the decision to include Highland as a member in</p> <p>12 SE Multifamily?</p> <p>13 A. Not that I'm aware of.</p> <p>14 Q. Did Mr. Courmoyer play any role in</p> <p>15 the allocation of membership interests among the</p> <p>16 members of SE Multifamily?</p> <p>17 A. No.</p> <p>18 Q. Did Mr. Courmoyer -- was</p> <p>19 Mr. Courmoyer given any decision-making authority</p> <p>20 with respect to any aspect of SE Multifamily?</p> <p>21 A. Any decision-make -- I don't know.</p> <p>22 Q. Let me ask a better question.</p> <p>23 Did you personally delegate any</p> <p>24 decision-making authority to Mr. Courmoyer with</p> <p>25 respect to Project Unicorn?</p>	<p>Page 95</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. We were deferential, as we have to</p> <p>3 be, to any protocols within this transaction.</p> <p>4 The assets were chopped up amongst various</p> <p>5 entities and funds' companies. So there was --</p> <p>6 there was a compliance aspect to it that was --</p> <p>7 that was in their realm of expertise that we --</p> <p>8 that we didn't.</p> <p>9 Q. But you made the decisions based on</p> <p>10 the advice that you received; correct?</p> <p>11 A. Sure.</p> <p>12 Q. You didn't delegate decision-making</p> <p>13 authority to anybody except BH Equities in terms</p> <p>14 of property management; correct? That's what we</p> <p>15 talked about earlier.</p> <p>16 A. Yeah, that's right. I mean, there's</p> <p>17 -- there's certain rules we had to follow based</p> <p>18 upon compliance that, you know, it wasn't really</p> <p>19 a -- my decision or anyone's decisions. We just</p> <p>20 had to follow the rules.</p> <p>21 Q. Do you have any reason to believe</p> <p>22 that Mr. Courmoyer did anything wrong in</p> <p>23 connection with anything that he did as part of</p> <p>24 Project Unicorn?</p> <p>25 A. No.</p>
<p>Page 96</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. Do you have any reason to believe</p> <p>3 that Mr. Sergent did anything wrong in connection</p> <p>4 with anything he may have done in connection with</p> <p>5 Project Unicorn?</p> <p>6 A. No.</p> <p>7 Q. Mr. Sergent wasn't involved in the</p> <p>8 decision to include Highland in SE Multifamily;</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. And he didn't have anything to do</p> <p>12 with how the membership interests at</p> <p>13 SE Multifamily would be allocated among its</p> <p>14 members; correct?</p> <p>15 A. Correct.</p> <p>16 Q. I think you -- you mentioned earlier</p> <p>17 that everybody knew about this Project Unicorn.</p> <p>18 Do I have that right?</p> <p>19 A. That's right.</p> <p>20 Q. Okay. I want to distinguish between</p> <p>21 what you think everybody knew and what you know</p> <p>22 actually happened.</p> <p>23 Other than the tax department at</p> <p>24 HCMLP, were there any other groups or departments</p> <p>25 at HCMLP that supported Project Unicorn? We've</p>	<p>Page 97</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 got the tax group. Any other group?</p> <p>3 A. The accounting group because Jim</p> <p>4 pledged \$400 million of assets on his -- on his</p> <p>5 personal balance sheet. So the accounting team,</p> <p>6 the finance team, Frank Waterhouse, David Klos,</p> <p>7 those guys would have been intimately familiar</p> <p>8 with it. His personal accountant, Melissa</p> <p>9 Schroth, I think those were all Highland</p> <p>10 employees.</p> <p>11 Q. Okay. And does HCRE contend that any</p> <p>12 Highland employee made a mistake or did anything</p> <p>13 wrong in connection with any of their duties on</p> <p>14 Project Unicorn?</p> <p>15 A. I mean, other than, again,</p> <p>16 collectively not amending the document filing</p> <p>17 prior to the petition filing, no.</p> <p>18 Q. And was anybody ever instructed to do</p> <p>19 what you just described?</p> <p>20 A. Yeah, I -- I think I've testified</p> <p>21 earlier that I asked our internal legal team to</p> <p>22 review -- to conduct a reverse due diligence on</p> <p>23 our real estate agreements.</p> <p>24 Q. And that was for all real estate</p> <p>25 agreements. Do I have that right?</p>

<p style="text-align: right;">Page 98</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. Yeah, that's right.</p> <p>3 Q. But you can't think of anything else;</p> <p>4 correct?</p> <p>5 A. No, correct.</p> <p>6 Q. All right. Let's just look quickly</p> <p>7 at the original LLC agreement. It's Exhibit 2.</p> <p>8 We can put that up on the screen.</p> <p>9 (Exhibit 2 was marked.)</p> <p>10 Q. All right. Do you see that this is</p> <p>11 the original LLC agreement dated as of August 23,</p> <p>12 2018?</p> <p>13 A. I do.</p> <p>14 Q. And you saw this before today; right?</p> <p>15 A. I have.</p> <p>16 Q. Yeah. I'll represent to you that</p> <p>17 this is the document bearing Mr. Dondero's</p> <p>18 signatures on behalf of HCRE and Highland.</p> <p>19 Did you personally see this document</p> <p>20 before Mr. Dondero signed it?</p> <p>21 A. Iterations of it.</p> <p>22 Q. Did you ever tell anybody that you</p> <p>23 thought there was a mistake in connection with</p> <p>24 any provision of this document before Mr. Dondero</p> <p>25 signed it?</p>	<p style="text-align: right;">Page 99</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. No.</p> <p>3 Q. Did anybody ever tell you before the</p> <p>4 document was signed that they believed there was</p> <p>5 a mistake in this document?</p> <p>6 A. No.</p> <p>7 Q. Did you -- did you provide any</p> <p>8 comments to this document before it was signed?</p> <p>9 A. No. I mean, other than just to</p> <p>10 review the economic provisions, no.</p> <p>11 Q. And did the economic provisions</p> <p>12 include the allocation of membership interests?</p> <p>13 A. Sure.</p> <p>14 Q. So you personally reviewed the</p> <p>15 allocation of membership interests in this</p> <p>16 document before it was signed; correct?</p> <p>17 A. Sure.</p> <p>18 Q. And you didn't -- you didn't believe</p> <p>19 there was any error in that regard; correct?</p> <p>20 A. Not as of the date of this agreement,</p> <p>21 no.</p> <p>22 Q. Okay. In your -- these questions are</p> <p>23 now specifically in your capacity as a 30(b)(6)</p> <p>24 witness for HCRE.</p> <p>25 Do you know whether -- were -- were</p>
<p style="text-align: right;">Page 100</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 HCRE and HCMLP engaged in an arm's length</p> <p>3 negotiation for this document? Do you know?</p> <p>4 A. I -- I would say we were all in the</p> <p>5 same rowboat.</p> <p>6 Q. Okay. So -- so HCRE and HCMLP didn't</p> <p>7 receive their own independent counsel, to the</p> <p>8 best of your knowledge; correct?</p> <p>9 A. I think that's fair.</p> <p>10 Q. And it's fair to say that the two</p> <p>11 entities were under the control of Mr. Dondero,</p> <p>12 and everybody working on behalf of Mr. Dondero</p> <p>13 was engaged in -- in this project; correct?</p> <p>14 A. That -- that's right. As of the date</p> <p>15 of this agreement, that's right.</p> <p>16 Q. That's right. And that was true</p> <p>17 until the petition date; isn't that right?</p> <p>18 A. I would say it was true a couple of</p> <p>19 week -- until a couple of weeks before the</p> <p>20 petition date when I learned that -- what was</p> <p>21 going to happen, yeah.</p> <p>22 Q. Okay. Do you know if any outside</p> <p>23 counsel provided advice in connection with the</p> <p>24 drafting of this document?</p> <p>25 A. Yeah, I think -- I think three law</p>	<p style="text-align: right;">Page 101</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 firms that I mentioned earlier were -- were --</p> <p>3 were part of this and laid eyes on it. It's</p> <p>4 Winston & Strawn is our public company, corporate</p> <p>5 company, Wick Phillips, which generally does the</p> <p>6 dirt work, quote/unquote, and Hunton & Williams.</p> <p>7 Q. And -- and to the best of your</p> <p>8 knowledge and understanding, those three firms</p> <p>9 provided the advice jointly to the Highland</p> <p>10 enterprise, which included HCRE and HCMLP. Is</p> <p>11 that fair?</p> <p>12 A. I think that's fair.</p> <p>13 Q. Okay. Do you know -- do you have an</p> <p>14 understanding as to who was responsible for</p> <p>15 looking out for HCRE's interests in the drafting</p> <p>16 of this document? Was it really just the</p> <p>17 collective "we"?</p> <p>18 A. Yeah, I -- I mean, I think it was a</p> <p>19 -- again, I think it was a collaborative -- as of</p> <p>20 the date of this agreement, it was a</p> <p>21 collaborative effort.</p> <p>22 Q. So that there wasn't one person or</p> <p>23 one law firm who was looking out solely for</p> <p>24 HCRE's interests; correct?</p> <p>25 A. Yeah, I think that's right. I think</p>

<p style="text-align: right;">Page 102</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 that's right.</p> <p>3 Q. And there wasn't one person or one</p> <p>4 law firm who was looking out solely for</p> <p>5 Highland's interests; correct?</p> <p>6 A. I think I'd agree with that.</p> <p>7 Q. And is it -- would you be comfortable</p> <p>8 in just characterizing the work of Winston,</p> <p>9 Wick Phillips, and -- who was the law --</p> <p>10 A. Hunton & Williams.</p> <p>11 Q. -- Hunton & Williams as -- as being</p> <p>12 kind of a joint representation?</p> <p>13 A. That was my perspective.</p> <p>14 Q. Let's turn to BH Equities. You're</p> <p>15 familiar with that entity; correct?</p> <p>16 A. I am.</p> <p>17 Q. Do you know how they got involved in</p> <p>18 Project Unicorn?</p> <p>19 A. I do.</p> <p>20 Q. How did -- how did BH Equities get</p> <p>21 involved in Project Unicorn?</p> <p>22 A. They -- they have -- BH Equities and</p> <p>23 BH Management had from 2013 to 2014 been our sole</p> <p>24 multi-family management partner. They would</p> <p>25 invest a sliver of equity in -- in the variety of</p>	<p style="text-align: right;">Page 103</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 deals with us, and they'll still manage assets</p> <p>3 for us today.</p> <p>4 Q. And BH Equities became a member of</p> <p>5 SE Multifamily in March 2019; correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Did you personally speak with folks</p> <p>8 at BH Equities in connection with the negotiation</p> <p>9 or drafting of the Amended and Restated</p> <p>10 SE Multifamily LLC Agreement?</p> <p>11 A. Yes.</p> <p>12 Q. Can you recall the substance of your</p> <p>13 communications with BH Equities on -- on -- just</p> <p>14 on the topic of the Amended and Restated LLC</p> <p>15 Agreement?</p> <p>16 A. Yeah, I can.</p> <p>17 Q. Please do so.</p> <p>18 A. My primary contact at the time was</p> <p>19 Ben Rhode. Ben was their acquisitions -- senior</p> <p>20 acquisitions manager and -- and probably our best</p> <p>21 relationship guy within BH. Given that the</p> <p>22 trauma that had occurred with the KeyBank</p> <p>23 re-trade, having to go find \$150 million in</p> <p>24 60 days, he was -- he and BH were okay with</p> <p>25 waiting to see how the transaction would</p>
<p style="text-align: right;">Page 104</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 ultimately evolve.</p> <p>3 And, you know, I think while they had</p> <p>4 6 percent interest, that they probably wanted</p> <p>5 more. They did want more. But, again, it was a</p> <p>6 -- there was a lot of wood to chop to pay down --</p> <p>7 pay down that debt. So we kind of put that piece</p> <p>8 -- the -- the extension or the increase in their</p> <p>9 -- in their allocation off until we figured that</p> <p>10 -- that paydown out.</p> <p>11 Q. And -- and you put it off until the</p> <p>12 moment that you signed the Amended and Restated</p> <p>13 LLC Agreement; is that fair?</p> <p>14 A. No. The Amended and Restated LLC</p> <p>15 Agreement just reflected what we believe their</p> <p>16 capital contribution was as a percentage of the</p> <p>17 equity.</p> <p>18 Q. So discussions continued about their</p> <p>19 -- the extent of their interests post signing.</p> <p>20 Do I have that right?</p> <p>21 A. That's correct.</p> <p>22 Q. But no -- but no agreement was ever</p> <p>23 reached on an amendment of any kind; right?</p> <p>24 A. Post March, that's right, yeah.</p> <p>25 Q. Okay. Other than the topic that you</p>	<p style="text-align: right;">Page 105</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 just identified, which is whether BH Equities</p> <p>3 would get more than the 6 percent, did you</p> <p>4 personally participate in any discussions with</p> <p>5 BH Equities regarding any aspect of the Amended</p> <p>6 and Restated LLC Agreement?</p> <p>7 A. No.</p> <p>8 Q. Okay.</p> <p>9 A. Well, I think we wanted to make --</p> <p>10 other than making sure that the waterfall to pay</p> <p>11 off the debt was congruent with both of our</p> <p>12 understandings.</p> <p>13 Q. So you -- you participated in the --</p> <p>14 in communications regarding the waterfall. Do I</p> <p>15 have that right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. We'll get to that in a minute.</p> <p>18 Were you involved in the negotiation</p> <p>19 of the terms of the KeyBank loan agreement?</p> <p>20 A. Yeah, very much so.</p> <p>21 Q. Okay. Were you aware that Highland</p> <p>22 was going to be jointly and severally liable for</p> <p>23 all of the obligations under the KeyBank loan?</p> <p>24 A. I was, but there was a little nuance</p> <p>25 to that piece.</p>

<p style="text-align: right;">Page 106</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. Okay. What was the nuance?</p> <p>3 A. I think it's Section 5.12 of the loan</p> <p>4 agreement lays out the collateral package which</p> <p>5 describe the \$400 million of assets that were</p> <p>6 pledged off of Jim's balance sheet largely. We</p> <p>7 wanted to make sure that in the event of a</p> <p>8 default, that there wasn't contagion risk on a</p> <p>9 joint and several basis.</p> <p>10 So there's a provision in there that</p> <p>11 mandates that Key has to foreclose on the</p> <p>12 publicly traded stock first, sort of a priority,</p> <p>13 if you will, of -- of exercising their</p> <p>14 foreclosure rights in the event of default. So</p> <p>15 while there's a joint and several piece to it,</p> <p>16 there's -- it's a mitigating factor.</p> <p>17 Q. And that mitigating factor was a</p> <p>18 direction to KeyBank that they had to go after</p> <p>19 the public stock before they could go after the</p> <p>20 assets of any co-borrower. Do I have that right?</p> <p>21 A. That's right. And the stock was</p> <p>22 owned by -- by Jim.</p> <p>23 Q. Okay. Other than -- and what was the</p> <p>24 -- okay. So they have to go after that first,</p> <p>25 but after that, KeyBank had the right to go after</p>	<p style="text-align: right;">Page 107</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 any co-borrower on a joint and several basis. Do</p> <p>3 I have that right?</p> <p>4 A. Yeah, it's a million three shares</p> <p>5 worth 75 million. After they get through their</p> <p>6 75 million, they would have to -- they could</p> <p>7 choose whatever -- wherever they wanted to go.</p> <p>8 Q. Okay. Did Highland receive anything</p> <p>9 in return, to the best of your knowledge, in</p> <p>10 exchange for its commitment to be jointly and</p> <p>11 severally liable under the KeyBank loan, subject</p> <p>12 to the exception that you just described?</p> <p>13 A. Yeah, they received \$1.14 million</p> <p>14 within 30 days of the transaction closing, which</p> <p>15 was, I think, 23 times their investment.</p> <p>16 Q. What did they receive that money for?</p> <p>17 A. Pain and suffering for KeyBank</p> <p>18 re-trading us, they -- KeyBank sent -- sent back</p> <p>19 a piece of their commitment fees.</p> <p>20 Q. And how was that -- how was that</p> <p>21 calculated?</p> <p>22 A. It was calculated on a daily</p> <p>23 outstanding basis. They -- they sent us a</p> <p>24 spreadsheet on how they calculated it, but they</p> <p>25 realized that we had a traumatic experience,</p>
<p style="text-align: right;">Page 108</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Starwood was the seller, they're very well known.</p> <p>3 We were becoming well known, and there was a lot</p> <p>4 of reputational issues for them. So they tried</p> <p>5 to do right by us and they sent the money back,</p> <p>6 and we sent it to Highland.</p> <p>7 Q. Was it to reimburse Highland for any</p> <p>8 expenses?</p> <p>9 A. No.</p> <p>10 Q. Why was the decision made to give it</p> <p>11 to Highland?</p> <p>12 A. Jim asked me to -- when I told Jim</p> <p>13 about the money, he said go -- go ask Klos where</p> <p>14 he wants it to be sent, send it to Highland.</p> <p>15 Q. What were the other options? Do you</p> <p>16 know?</p> <p>17 A. Didn't ask.</p> <p>18 Q. Was any other money returned?</p> <p>19 A. Just that.</p> <p>20 Q. Okay. Did you understand at the time</p> <p>21 that the KeyBank loan was entered into, that HCRE</p> <p>22 was going to be designated as the lead borrower?</p> <p>23 A. It was -- yeah, I did, yeah.</p> <p>24 Q. And who made the decision to</p> <p>25 designate HCRE as the lead borrower?</p>	<p style="text-align: right;">Page 109</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. It was sort of out of necessity, if</p> <p>3 you will, but it was ultimately Jim and myself.</p> <p>4 Q. And why did you decide to designate</p> <p>5 HCRE as the lead borrower among all of the</p> <p>6 co-borrowers?</p> <p>7 A. I think -- I think because it had the</p> <p>8 most flexibility in its operating agreement and</p> <p>9 the mandate. And it pledged -- sorry, just one</p> <p>10 more -- and it pledged a significant amount of</p> <p>11 its assets that it had at the time.</p> <p>12 Q. Did Highland agree that HCMLP would</p> <p>13 -- withdrawn.</p> <p>14 Did Highland agree that HCRE should</p> <p>15 be designated as the lead borrower?</p> <p>16 A. I think they were deferential to Jim</p> <p>17 and I on -- on that piece.</p> <p>18 Q. In fact, Jim made that decision on</p> <p>19 behalf of Highland; correct?</p> <p>20 A. I -- yeah, I presume so.</p> <p>21 Q. Did you have any understanding as to</p> <p>22 how much money the lead borrower was going to</p> <p>23 borrow under the KeyBank loan prior to the time</p> <p>24 it was signed?</p> <p>25 A. I did. There was a -- was a robust</p>

<p style="text-align: right;">Page 110</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 collateral package that we put together.</p> <p>3 Q. I'm -- I'm looking at it from the</p> <p>4 other perspective, from the other side. How much</p> <p>5 -- how much did you expect a need to borrow?</p> <p>6 A. Sorry, say that again.</p> <p>7 Q. How much -- how much did the</p> <p>8 borrowers expect to need to borrow under the</p> <p>9 KeyBank loan document before they signed it?</p> <p>10 They have -- you had a plan; right?</p> <p>11 A. Yeah, we did. We needed I think,</p> <p>12 roughly, 330, 340 million dollars.</p> <p>13 Q. And did you understand that under the</p> <p>14 KeyBank loan documentation, HCRE as the lead</p> <p>15 borrower would have the ability to allocate the</p> <p>16 proceeds among the co-borrowers?</p> <p>17 A. No, that's not how it worked.</p> <p>18 Q. Ultimately, all of the loan proceeds</p> <p>19 were allocated to HCRE; correct?</p> <p>20 A. Loan proceeds? As the -- the loan --</p> <p>21 the loan proceeds or the loan allocation?</p> <p>22 Q. Loan allocation.</p> <p>23 A. Okay. The allocation was made on a</p> <p>24 per-asset basis tested by an LTV ratio that Key</p> <p>25 and we on the real estate agreed.</p>	<p style="text-align: right;">Page 111</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. Then let's go to proceeds.</p> <p>3 A. Okay.</p> <p>4 Q. Right? I mean, \$250 million was</p> <p>5 allocated to HCRE for purposes of the Amended and</p> <p>6 Restated LLC Agreement; correct?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And who made that decision?</p> <p>9 A. I think it was collective --</p> <p>10 collectively HCRE and -- and KeyBank.</p> <p>11 Q. All right. We'll get to this in a</p> <p>12 minute. Let's talk about the events leading up</p> <p>13 to the signing of the amended and restated.</p> <p>14 The KeyBank loan closed in</p> <p>15 September 2018; correct?</p> <p>16 A. Correct.</p> <p>17 Q. And y'all had 60 days to pay back</p> <p>18 \$150 million; is that right?</p> <p>19 A. That's right.</p> <p>20 Q. And so you spent those 60 days</p> <p>21 selling some of the real estate you had just</p> <p>22 purchased in order to pay back the loan; is that</p> <p>23 fair?</p> <p>24 A. No. We went and got -- we went and</p> <p>25 got the capital from a third party.</p>
<p style="text-align: right;">Page 112</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. Who did you get the capital from?</p> <p>3 A. Walker & Dunlop.</p> <p>4 Q. How much did Walker & Dunlop loan?</p> <p>5 A. They -- KeyBank cut the -- cut the</p> <p>6 \$330 million loan into two pieces, an A and a B</p> <p>7 note. They sold, if you will, 150 of the B note</p> <p>8 to -- to Walker, and that counted towards our</p> <p>9 paydown requirement.</p> <p>10 Q. Okay. And BH Equities had put in</p> <p>11 approximately \$20 million towards Project</p> <p>12 Unicorn; correct?</p> <p>13 A. Sounds about right.</p> <p>14 Q. And that money was funded before the</p> <p>15 closing of the KeyBank loan; is that right?</p> <p>16 A. Some of it was and I believe they</p> <p>17 contributed some at closing to cover some -- some</p> <p>18 prorations and some other costs.</p> <p>19 Q. So let me restate the question. All</p> <p>20 of BH Equities' \$20 million capital contribution</p> <p>21 was funded on or before the closing of the</p> <p>22 KeyBank loan; correct?</p> <p>23 A. That's fair.</p> <p>24 Q. And they made that funding without</p> <p>25 any written agreement of any kind; correct?</p>	<p style="text-align: right;">Page 113</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. They did.</p> <p>3 Q. And so following the closing and the</p> <p>4 paydown of the \$150 million, discussions</p> <p>5 continued with BH Equities as to the scope of</p> <p>6 their membership interests in to-be-formed or</p> <p>7 to-be-amended SE Multifamily LLC agreement;</p> <p>8 correct?</p> <p>9 A. I think we all had questions on our</p> <p>10 scope of what -- what was going on, yeah.</p> <p>11 Q. But it's fair to say that by the time</p> <p>12 the Amended and Restated LLC Agreement,</p> <p>13 BH Equities had put in all of the capital that it</p> <p>14 ever put into this project; correct?</p> <p>15 A. I think that's -- I think that's</p> <p>16 right.</p> <p>17 Q. And prior to the time the Amended and</p> <p>18 Restated LLC Agreement, Highland had put in all</p> <p>19 of the capital that it was ever going to put into</p> <p>20 the project; correct?</p> <p>21 A. Correct.</p> <p>22 Q. And prior to the time that the</p> <p>23 Amended and Restated LLC Agreement was signed in</p> <p>24 March of 2019, HCRE had put in all of the capital</p> <p>25 that it was ever going to put into this project;</p>

<p>Page 114</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 correct?</p> <p>3 A. Turns out that way, yeah.</p> <p>4 Q. Okay. So that at the time that the</p> <p>5 agreement was signed, to the best of your</p> <p>6 knowledge, HCRE, Highland, and BH Equities all</p> <p>7 knew and understood how much capital each of the</p> <p>8 members had contributed to SE Multifamily;</p> <p>9 correct?</p> <p>10 A. I can't -- I can't speak for what BH</p> <p>11 thought the -- where the capital came from, from</p> <p>12 what our -- from what our -- from our side.</p> <p>13 Q. Okay. So let me restate the</p> <p>14 question. So as of the date that the Amended and</p> <p>15 Restated LLC Agreement is signed in March of</p> <p>16 2019, to the best of your knowledge and</p> <p>17 understanding, HCRE and Highland were aware of</p> <p>18 the capital contributions that had been made</p> <p>19 among all of the prospective members to the</p> <p>20 agreement; correct?</p> <p>21 A. I think that's right.</p> <p>22 Q. Okay. Let's put up on the screen</p> <p>23 Exhibit No. 4, which is a February 28, 2019,</p> <p>24 email.</p> <p>25 (Exhibit 4 was marked.)</p>	<p>Page 115</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. All right. I see we've -- we've put</p> <p>3 up on the screen, Mr. McGraner, an email dated</p> <p>4 February 28, 2019, between Mr. Patrick and</p> <p>5 Mr. Raver.</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Have you ever seen this email before?</p> <p>9 A. No.</p> <p>10 Q. Do you know who Mr. Raver is?</p> <p>11 A. I think so.</p> <p>12 Q. Who do you think Mr. Raver is?</p> <p>13 A. I -- I feel bad. I -- I think he</p> <p>14 works on the accounting team, but I know the</p> <p>15 name, but I couldn't -- I couldn't pick him out</p> <p>16 of a lineup.</p> <p>17 Q. Okay. Do you see this page --</p> <p>18 Yeah, we're not going to put him in a</p> <p>19 lineup. Don't worry.</p> <p>20 Do you see it says, quote, "Must keep</p> <p>21 cash allocation below 50 percent to HCMLP to</p> <p>22 avoid consolidation"?</p> <p>23 A. Yes.</p> <p>24 Q. Do you have any idea what's being</p> <p>25 discussed in this brief email?</p>
<p>Page 116</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. Only a guess, but...</p> <p>3 Q. With the -- with the understanding</p> <p>4 that it's a guess, what do you believe that --</p> <p>5 A. Sure.</p> <p>6 Q. -- they're discussing?</p> <p>7 A. I think because of the -- the large</p> <p>8 amount of leverage put on Project Unicorn, they</p> <p>9 didn't want to have to -- or for Highland's</p> <p>10 audited financials and the various, you know,</p> <p>11 reports that they have to give out to</p> <p>12 counterparties, they don't want to show that much</p> <p>13 leverage. So if they were allocated more than</p> <p>14 50, I'd assume that that's -- consolidation hurts</p> <p>15 their -- hurts their financial reporting.</p> <p>16 Q. Do you have any idea what the concept</p> <p>17 of consolidation means in the context of -- of</p> <p>18 SE Multifamily?</p> <p>19 A. I don't think -- my -- my personal</p> <p>20 view, I don't think that's what they're talking</p> <p>21 about here.</p> <p>22 Q. Do you have an understanding as to</p> <p>23 what the phrase "cash allocation" refers to?</p> <p>24 A. Yes.</p> <p>25 Q. What's your understanding of that</p>	<p>Page 117</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 phrase?</p> <p>3 A. While it's not specific other than</p> <p>4 the subject line being Unicorn, so I would say</p> <p>5 the cash allocation of -- cash allocation of</p> <p>6 profits and losses need to be below 50 percent.</p> <p>7 Q. All right. Let's -- let's move on.</p> <p>8 Let's look at the next email, Exhibit 5, please.</p> <p>9 It's also dated February 28, 2019.</p> <p>10 (Exhibit 5 was marked.)</p> <p>11 Q. And you'll see this is an email from</p> <p>12 Mr. Patrick to a number of people, including</p> <p>13 yourself. Do you recall seeing this email</p> <p>14 before?</p> <p>15 A. Sure.</p> <p>16 Q. And -- and do you -- do you recall</p> <p>17 that the effort was made to have the Amended and</p> <p>18 Restated LLC Agreement signed by March 15th so</p> <p>19 that it could be made retroactive to August 23,</p> <p>20 2018?</p> <p>21 A. Yeah.</p> <p>22 Q. And if we scroll down, you'll see</p> <p>23 that there's a copy of the -- a draft amended and</p> <p>24 restated agreement.</p> <p>25 Do you see that?</p>

<p>Page 118</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. I do.</p> <p>3 Q. Do you have any understanding as to</p> <p>4 who was responsible for the drafting of the</p> <p>5 amended and restated agreement?</p> <p>6 A. I believe Hunton & Williams.</p> <p>7 Q. And who was instructing Hunton &</p> <p>8 Williams, if you know?</p> <p>9 A. Mark Patrick. He was the primary</p> <p>10 contact.</p> <p>11 Q. And did you know at the time that</p> <p>12 Mark Patrick was the primary contact with</p> <p>13 Hunton & Williams in the drafting of the Amended</p> <p>14 and Restated LLC Agreement?</p> <p>15 A. I believe so.</p> <p>16 Q. Does HCRE contend that Mr. Patrick</p> <p>17 made any errors or mistakes in the work that he</p> <p>18 did in connection with the drafting of the</p> <p>19 Amended and Restated LLC Agreement?</p> <p>20 A. As of this date?</p> <p>21 Q. Yep.</p> <p>22 A. No.</p> <p>23 Q. How about Hunton & Williams? Does</p> <p>24 HCRE contend that Hunton & Williams made any</p> <p>25 errors or mistakes in connection with the work</p>	<p>Page 119</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 that it did with respect to the First Amended and</p> <p>3 Restated LLC Agreement for SE Multifamily?</p> <p>4 A. No.</p> <p>5 Q. Is -- do you recall is this the first</p> <p>6 draft of the amended and restated agreement that</p> <p>7 you saw?</p> <p>8 A. Probably. But I don't -- I don't</p> <p>9 recall.</p> <p>10 Q. Do -- do you recall ever providing</p> <p>11 any comments to anybody at any time concerning</p> <p>12 any aspect of the first amended and restated</p> <p>13 agreement before it was signed?</p> <p>14 A. No.</p> <p>15 Q. Did you personally review drafts of</p> <p>16 this agreement before it was signed?</p> <p>17 A. Just a waterfall.</p> <p>18 MR. MORRIS: Can we go back to the</p> <p>19 email, please?</p> <p>20 Q. (BY MR. MORRIS) Do you see</p> <p>21 Mr. Patrick has described four changes to the</p> <p>22 agreement?</p> <p>23 A. I do.</p> <p>24 Q. And were you aware of those changes</p> <p>25 at the time that he proposed them?</p>
<p>Page 120</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. I was.</p> <p>3 Q. Okay. Looking at the -- the last</p> <p>4 line, there's a reference to the return preparer.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know who that refers to?</p> <p>8 A. Mark Barker.</p> <p>9 Q. At Barker Viggato?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Do you have an understanding</p> <p>12 of why there was a need to get Barker Viggato</p> <p>13 comfortable before executing the document with</p> <p>14 respect to the anticipated tax allocations of the</p> <p>15 P&L?</p> <p>16 A. A billion-dollar complex</p> <p>17 transaction --</p> <p>18 Q. Well, but what about --</p> <p>19 A. -- I guess.</p> <p>20 Q. Again, it's not a guessing game. If</p> <p>21 you remember, great; if you don't, that's fine.</p> <p>22 But was there a discussion or any communications</p> <p>23 concerning the anticipated tax allocations of the</p> <p>24 P&L that you can recall?</p> <p>25 A. No.</p>	<p>Page 121</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. Do you recall how the P&L was</p> <p>3 ultimately allocated in the final amended and</p> <p>4 restated agreement?</p> <p>5 A. I think -- I think largely the</p> <p>6 majority was went -- went to Highland --</p> <p>7 Q. Okay.</p> <p>8 A. -- passively.</p> <p>9 Q. Okay. Can we go to page 12, which I</p> <p>10 think is 13 of 55. And do you see --</p> <p>11 MR. MORRIS: You can scroll up a</p> <p>12 little bit. Okay. Stop there.</p> <p>13 Q. -- that in paragraph 6.4(a), profits</p> <p>14 and losses were allocated 94 percent to Highland</p> <p>15 and 6 percent to BH.</p> <p>16 Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. Do you have an understanding that</p> <p>19 that's the very provision that Mr. Patrick said</p> <p>20 they needed to get Barker & Viggato comfortable</p> <p>21 with?</p> <p>22 A. I don't -- I don't agree with that</p> <p>23 statement.</p> <p>24 Q. Is there another provision in the</p> <p>25 document that Barker & Viggato had to get</p>

<p style="text-align: right;">Page 122</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 comfortable with that you're aware of?</p> <p>3 A. I think -- I think Mark's email</p> <p>4 refers to those four items, not just the -- not</p> <p>5 just 6.4(a) from my read of it, the inclusion of</p> <p>6 new parties and all the other stuff.</p> <p>7 Q. Okay. Did -- did you participate in</p> <p>8 any discussions with anybody at any time</p> <p>9 concerning Section 6.4?</p> <p>10 A. Yes.</p> <p>11 Q. Who did you discuss 6.4 with?</p> <p>12 A. Our tax team.</p> <p>13 Q. And what do you recall about those</p> <p>14 conversations?</p> <p>15 A. Since Highland received the</p> <p>16 1.14 million, BH receive the acquisition fees at</p> <p>17 closing, that it made sense to allocate 2018 this</p> <p>18 way.</p> <p>19 Q. Is your testimony that the reason</p> <p>20 that 6.4 exists in the manner that it does is</p> <p>21 because Highland got \$1 million at closing?</p> <p>22 A. Yeah, that's -- that's my -- no one</p> <p>23 else got any money.</p> <p>24 Q. Right. And is there any reason that</p> <p>25 you can think of that HCRE isn't being allocated</p>	<p style="text-align: right;">Page 123</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 any of the profits and losses?</p> <p>3 A. No.</p> <p>4 Q. Did you ever discuss with anybody why</p> <p>5 Highland was taking 94 percent of the profits and</p> <p>6 losses other than the fact that it got \$1 million</p> <p>7 at closing?</p> <p>8 A. I mean, that it -- it's a lot of</p> <p>9 money.</p> <p>10 Q. I didn't ask you if it was a lot of</p> <p>11 money, sir. Do you need me to restate the</p> <p>12 question?</p> <p>13 A. Yes, please.</p> <p>14 Q. Is there any reason that Highland was</p> <p>15 allocated 94 percent of the profits and losses</p> <p>16 other than the fact that it got \$1 million at</p> <p>17 closing?</p> <p>18 A. I -- I think we -- I think they</p> <p>19 looked at it -- the income and that's where it</p> <p>20 went, that's how they allocated it.</p> <p>21 Q. I know. I can read the document.</p> <p>22 I'm asking if you know why they did that for any</p> <p>23 reason other than the fact, according to you, it</p> <p>24 was \$1 million that was paid to Highland at</p> <p>25 closing?</p>
<p style="text-align: right;">Page 124</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. No. That -- that would be -- that</p> <p>3 would be my perspective.</p> <p>4 Q. Do you know if the allocation of</p> <p>5 94 percent of the profits and losses to Highland</p> <p>6 had anything to do with the purported tax</p> <p>7 benefits that you mentioned earlier, that was one</p> <p>8 of the reasons Highland was included in this</p> <p>9 deal?</p> <p>10 A. No.</p> <p>11 Q. Okay. Who on behalf of Highland</p> <p>12 agreed that -- did -- in all of the work that you</p> <p>13 did, did you ever do an estimate as to what the</p> <p>14 profits and losses were going to be from</p> <p>15 SE Multifamily?</p> <p>16 A. Ultimately?</p> <p>17 Q. Yeah.</p> <p>18 A. Yeah, I -- we had a -- we had a</p> <p>19 business plan. We had a underwriting.</p> <p>20 Q. So under that business plan or under</p> <p>21 that underwriting, do you recall what the</p> <p>22 projected profits and losses were for</p> <p>23 SE Multifamily?</p> <p>24 A. Over a five-year hold, I thought we</p> <p>25 would make, given the market, and if we were able</p>	<p style="text-align: right;">Page 125</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 to get through the Walker & Dunlop and KeyBank</p> <p>3 issues, 20 to 40 million bucks.</p> <p>4 Q. 20 to 40 million dollars of profits</p> <p>5 and losses. Do I have that right?</p> <p>6 A. Well, profits, right.</p> <p>7 Q. Right. On a net basis it would have</p> <p>8 been 20 to 40 million dollars of profit?</p> <p>9 A. That's right. At the end of the</p> <p>10 rainbow of a five-year hold, 20 to 40 million.</p> <p>11 Q. Did you do any analysis to see what</p> <p>12 Highland's tax liability was going to be on 20 to</p> <p>13 40 million dollars of tax profit?</p> <p>14 A. No.</p> <p>15 Q. Do you have any idea how the</p> <p>16 projected tax liability from 20 to 40 million</p> <p>17 dollars of tax profits correlates to the</p> <p>18 \$1 million that it received at the closing of the</p> <p>19 KeyBank deal?</p> <p>20 A. Do I have any what? Any -- sorry,</p> <p>21 can you repeat the question.</p> <p>22 Q. Sure. Do you have -- did you do any</p> <p>23 analysis to see how Highland's tax liability on</p> <p>24 20 to 40 million dollars of profits corresponds</p> <p>25 to the \$1 million that it received at the closing</p>

<p style="text-align: right;">Page 126</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 of the KeyBank that you say is the reason for</p> <p>3 this provision?</p> <p>4 A. I don't think I said that this was</p> <p>5 the reason for this provision.</p> <p>6 Q. I think you said that the reason for</p> <p>7 -- for the 94 percent allocation to Highland was</p> <p>8 because it got \$1 million in connection with the</p> <p>9 KeyBank closing; correct?</p> <p>10 A. Right. For 2018, that's right.</p> <p>11 Q. Okay. So now they're going to be</p> <p>12 faced with tax liability on receipt -- on -- on</p> <p>13 having 20 -- 94 percent of 20 to 40 million</p> <p>14 dollars of profits being allocated to it;</p> <p>15 correct?</p> <p>16 A. No.</p> <p>17 Q. Why not?</p> <p>18 A. Because 2019 could have been a</p> <p>19 different year. 2020 could have been a different</p> <p>20 year. And it was. Coronavirus hit. It</p> <p>21 sustained losses, I mean, there -- we didn't know</p> <p>22 what was going to happen.</p> <p>23 Q. You made a decision to sign an</p> <p>24 agreement that allocated 94 percent of the</p> <p>25 profits, correct, to Highland?</p>	<p style="text-align: right;">Page 127</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. For 2018, that's correct.</p> <p>3 Q. That's what the document says; right?</p> <p>4 A. For 2018, that's correct.</p> <p>5 Q. And you -- and you did that with the</p> <p>6 expectation, because you didn't know about Corona</p> <p>7 in March of 2019; right?</p> <p>8 A. No. But we knew about KeyBank and</p> <p>9 Walker & Dunlop's, correct.</p> <p>10 Q. And you've taken all of that -- and</p> <p>11 you took -- and you took all of that into</p> <p>12 account, though, already; right?</p> <p>13 A. Yeah, sure.</p> <p>14 Q. And yet -- and yet you still</p> <p>15 projected 20 to 40 million dollars of profits;</p> <p>16 correct?</p> <p>17 A. We're real estate, we're optimists.</p> <p>18 Q. Okay. You see where I'm going here;</p> <p>19 right? Does it make any sense at all for</p> <p>20 somebody to agree to take 94 percent of the tax</p> <p>21 liability on projected 20 to 40 million dollars</p> <p>22 of profits when they -- in exchange for</p> <p>23 \$1 million? Would you do that?</p> <p>24 A. If I put in 49,000 and I got</p> <p>25 \$1 million back in 30 days, I might.</p>
<p style="text-align: right;">Page 128</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. How much -- how much is 1 over 20?</p> <p>3 That's 5 percent; right?</p> <p>4 A. Sure.</p> <p>5 Q. And 1 over 40 is 2.5 percent; right?</p> <p>6 A. Right.</p> <p>7 Q. Do you believe that Highland was</p> <p>8 going to pay 2.5 to 5 percent -- withdrawn.</p> <p>9 If -- if Highland's tax liability was</p> <p>10 2.5 to 5 percent, then they would be made -- and</p> <p>11 then it would be a wash -- right? -- and they</p> <p>12 received 20 to 40 million dollars of -- of</p> <p>13 profits, then Highland would be no better off</p> <p>14 than it was before it received \$1 million; right?</p> <p>15 A. Under that narrow example, yeah.</p> <p>16 Q. So why would Highland agree to do</p> <p>17 that?</p> <p>18 A. I think the -- again, the purpose was</p> <p>19 the document was a living document to reflect the</p> <p>20 transition of the portfolio, the first year is</p> <p>21 allocated this way.</p> <p>22 Q. Did you believe that the 94 percent</p> <p>23 could be adjusted over time?</p> <p>24 A. Yes.</p> <p>25 Q. What's the basis for that belief?</p>	<p style="text-align: right;">Page 129</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. It's what I was told.</p> <p>3 Q. What were you told?</p> <p>4 A. That it could be adjusted over time.</p> <p>5 Q. Did they -- who told you that?</p> <p>6 A. Our tax team -- or Highland's tax</p> <p>7 team.</p> <p>8 Q. Who on the tax team told you that the</p> <p>9 94 percent could be adjusted?</p> <p>10 A. Mark Patrick.</p> <p>11 Q. Did he tell you that HCRE had the</p> <p>12 unilateral right to ad -- adjust that percentage?</p> <p>13 A. No.</p> <p>14 Q. Did he tell you how it would be</p> <p>15 adjusted?</p> <p>16 A. No.</p> <p>17 Q. Did he tell you what factors would be</p> <p>18 taken into account in making the adjustment?</p> <p>19 A. No.</p> <p>20 Q. Did he tell you whether or not their</p> <p>21 consent of the other members would be required</p> <p>22 before an adjustment would be made?</p> <p>23 A. No.</p> <p>24 Q. Do you know if this percentage was</p> <p>25 ever adjusted since the time this agreement was</p>

<p>Page 130</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 signed?</p> <p>3 A. No, because the bankruptcy petition</p> <p>4 was filed the next year.</p> <p>5 Q. But between the time it was signed</p> <p>6 and the petition date, it was never adjusted;</p> <p>7 correct?</p> <p>8 A. That six- or seven-month period, no.</p> <p>9 Q. Did you ever ask them how -- how this</p> <p>10 percentage could be adjusted?</p> <p>11 A. I didn't.</p> <p>12 Q. Did you ever ask him the bases that</p> <p>13 would be taken into account, the factors that</p> <p>14 would be taken into account to adjust this</p> <p>15 percentage?</p> <p>16 MR. MORRIS: I've lost you Mr. --</p> <p>17 (Zoom technical difficulty.)</p> <p>18 THE VIDEOGRAPHER: Yeah, I think we</p> <p>19 lost the witness. Do you want to go off</p> <p>20 the record, sir?</p> <p>21 MR. MORRIS: Yeah.</p> <p>22 THE VIDEOGRAPHER: The time is</p> <p>23 12:21 p.m. and we are going off the record.</p> <p>24 (Break from 12:19 p.m. to 12:30 p.m.)</p> <p>25 THE VIDEOGRAPHER: The time is</p>	<p>Page 131</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 12:32 p.m. and we're back on the record.</p> <p>3 Q. (BY MR. MORRIS) Let's just go to the</p> <p>4 next exhibit, Exhibit 6, please.</p> <p>5 (Exhibit 6 was marked.)</p> <p>6 Q. So if we can scroll down to the email</p> <p>7 at the bottom right there, do you see this is an</p> <p>8 email from Mr. Broaddus dated March 14, 2019?</p> <p>9 A. I do.</p> <p>10 Q. And you're copied on that email;</p> <p>11 right?</p> <p>12 A. Uh-huh, right.</p> <p>13 Q. And Mr. Broaddus says, among other</p> <p>14 things that "The contributions schedule in the</p> <p>15 attached needs to be updated with the actual</p> <p>16 contribution numbers."</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. Is it -- is it your recollection you</p> <p>20 recall that just before the agreement was signed,</p> <p>21 that Mr. Broaddus was working to update the</p> <p>22 contributions schedule to include the actual</p> <p>23 contribution numbers?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And did you have any</p>
<p>Page 132</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 communications with him at around that time</p> <p>3 concerning the updated contributions schedule?</p> <p>4 A. I didn't but that's not to say he</p> <p>5 didn't with my team.</p> <p>6 Q. I'm just asking for your knowledge.</p> <p>7 Did you have any conversations with him at around</p> <p>8 that time on this topic?</p> <p>9 A. I didn't.</p> <p>10 Q. Was Mr. Broaddus working under your</p> <p>11 direction?</p> <p>12 A. In the scope of this email?</p> <p>13 Q. Yeah.</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And you understood that one of</p> <p>16 the things that Mr. Broaddus was doing at this</p> <p>17 time was updating the contributions schedule with</p> <p>18 the actual contribution numbers; right?</p> <p>19 A. Yes.</p> <p>20 Q. And that was within the scope of</p> <p>21 Mr. Broaddus' responsibilities at the time;</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Does HCRE contend that</p> <p>25 Mr. Broaddus ever made a mistake in connection</p>	<p>Page 133</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 with the work he did updating the contributions</p> <p>3 schedule to include the actual contribution</p> <p>4 numbers?</p> <p>5 A. No, but I don't see the actual</p> <p>6 contribution numbers on the screen. So...</p> <p>7 Q. Okay.</p> <p>8 MR. MORRIS: Can we go to the top</p> <p>9 of the page?</p> <p>10 Q. Do you see you're copied again on a</p> <p>11 follow-up email where he informs BH Equities that</p> <p>12 he has attached the contributions schedule?</p> <p>13 A. Yes.</p> <p>14 Q. And if we can go to the next page, is</p> <p>15 it your understanding that the document that</p> <p>16 Mr. Broaddus sent to you and to BH Equities in</p> <p>17 this email contains the capital contributions by</p> <p>18 each of SE Multifamily's members?</p> <p>19 A. Yes.</p> <p>20 Q. And you saw this at the time;</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. Do you see where it shows HCRE</p> <p>24 Partners contributed approximately \$291 million?</p> <p>25 A. Yes.</p>

<p>Page 134</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. In your capacity as HCRE's 30(b)(6)</p> <p>3 witness, do you know what the source of funding</p> <p>4 was for that capital contribution?</p> <p>5 A. The KeyBank bridge and some cash that</p> <p>6 -- that -- that we got from distributions from</p> <p>7 NexBank -- NexVest, I mean.</p> <p>8 Q. What's the name of that entity?</p> <p>9 NexBank?</p> <p>10 A. NexVest, I believe it was.</p> <p>11 Q. Let's talk about the -- the first</p> <p>12 piece, the KeyBank bridge. Am I right that</p> <p>13 approximately 250 million of that \$291 million is</p> <p>14 the allocation to HCRE of a portion of the</p> <p>15 proceeds under the KeyBank loan?</p> <p>16 A. Yes, although I thought the number</p> <p>17 was -- the total number was 332 million. So...</p> <p>18 Q. Let me ask the question again then.</p> <p>19 What portion of the 291 do you</p> <p>20 understand to be sourced from the KeyBank loan?</p> <p>21 A. That's probably all of the KeyBank</p> <p>22 loan, but there should be another 30 in change in</p> <p>23 there, I think.</p> <p>24 Q. I was told -- I was told -- and you</p> <p>25 can tell me if it doesn't comport with your</p>	<p>Page 135</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 understanding -- but I think the prior testimony</p> <p>3 was that approximately \$250 million was the</p> <p>4 allocation to HCRE of at least a portion of the</p> <p>5 KeyBank loan, and the other 40 -- approximately</p> <p>6 \$40 million was sourced through a loan with</p> <p>7 NexBank or with NexVest?</p> <p>8 A. Yeah, generally that's right.</p> <p>9 Q. Okay. So then let's try this again.</p> <p>10 As HCRE's 30(b)(6) witness, would you agree that</p> <p>11 approximately \$250 million of the capital</p> <p>12 contribution reflected on Schedule A was</p> <p>13 allocated to HCRE Partners under the KeyBank loan</p> <p>14 and the balance of approximately \$40 million was</p> <p>15 borrowed by HCRE from NexVest or NexBank?</p> <p>16 A. Yes.</p> <p>17 Q. And is NexVest or NexBank an</p> <p>18 affiliate of Mr. Dondero's?</p> <p>19 A. It is.</p> <p>20 Q. And who made the decision to allocate</p> <p>21 to HCRE approximately \$250 million of the KeyBank</p> <p>22 loan for purposes of setting the capital</p> <p>23 contributions schedule here?</p> <p>24 A. Highland and -- and HCRE.</p> <p>25 Q. Would that be Mr. Dondero on behalf</p>
<p>Page 136</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 of both parties?</p> <p>3 A. In -- informed by professionals, but,</p> <p>4 yeah, that's right.</p> <p>5 Q. Do you know what factors Mr. Dondero</p> <p>6 took into account in deciding to allocate HCRE</p> <p>7 \$250 million of the KeyBank loan?</p> <p>8 A. I -- I don't know.</p> <p>9 Q. Did you ever discuss with him why</p> <p>10 HCRE was being allocated \$250 million of the</p> <p>11 KeyBank loan and Highland was being allocated</p> <p>12 zero?</p> <p>13 A. Yes.</p> <p>14 Q. Yeah. What did you discuss?</p> <p>15 A. I think it's the same reason that you</p> <p>16 saw in the Mark Patrick consolidation email,</p> <p>17 Highland didn't want to take on \$250 million of</p> <p>18 additional indebtedness.</p> <p>19 Q. Well, it did so already, did it not?</p> <p>20 A. No. It didn't have any guaranty,</p> <p>21 there's nonrecourse debt to -- to Highland. You</p> <p>22 don't -- you don't consolidate non -- nonrecourse</p> <p>23 debt.</p> <p>24 Q. I thought we established earlier that</p> <p>25 but for the senior collateral, Highland was</p>	<p>Page 137</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 jointly and severally liable for all obligations</p> <p>3 under the KeyBank loan. Have I misunderstood</p> <p>4 that?</p> <p>5 A. I -- yeah, I think you have.</p> <p>6 Q. So what part of the KeyBank loan was</p> <p>7 Highland liable for as a co-borrower? Any</p> <p>8 portion?</p> <p>9 A. There's a -- yeah, so -- sorry.</p> <p>10 There's a pledge and security agreement that</p> <p>11 accompanies the KeyBank loan. And the recourse</p> <p>12 provisions enure to the collateral package, which</p> <p>13 was the NexBank stock, the NXRT stock, the</p> <p>14 various assets that HCRE owned, all</p> <p>15 these specific collateral package listed in 5.12,</p> <p>16 that's -- that's the collateral. Those that --</p> <p>17 that's the re -- that's the recourse KeyBank</p> <p>18 would have against the borrowers.</p> <p>19 Q. So that's --</p> <p>20 A. And Highland didn't sign a guaranty.</p> <p>21 So it wasn't -- wasn't a guarantor; so they</p> <p>22 weren't ultimately liable.</p> <p>23 Q. So it's your -- it's your testimony</p> <p>24 under that KeyBank loan, if there was a default,</p> <p>25 KeyBank would never have the right to go after</p>

<p>Page 138</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Highland for any of the obligations that were the</p> <p>3 then outstanding under the KeyBank loan, is that</p> <p>4 your understanding?</p> <p>5 A. To the extent that there were losses</p> <p>6 that were beyond the value of the collateral</p> <p>7 pledged under the pledge in the security</p> <p>8 agreement and under the guaranty, you're right.</p> <p>9 But there's 500 million of -- of collateral</p> <p>10 there, none of which was pledged by -- by</p> <p>11 Highland.</p> <p>12 Q. How does -- how does your statement</p> <p>13 about consolidation -- withdrawn.</p> <p>14 Is there any reason -- withdrawn.</p> <p>15 And of that collateral, how much of</p> <p>16 it was pledged by HCRE?</p> <p>17 A. Do you have the KeyBank loan</p> <p>18 agreement by chance? There's a schedule of the</p> <p>19 -- of the collateral listed.</p> <p>20 Q. Do you know -- do you know if it was</p> <p>21 more or less than \$291 million?</p> <p>22 A. It was less.</p> <p>23 Q. Do you know if it was more or less</p> <p>24 than \$100 million?</p> <p>25 A. It was probably right around 100.</p>	<p>Page 139</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. Okay. So even though HCRE had only</p> <p>3 put up \$100 million, it took \$250 million of the</p> <p>4 proceeds as credit for its interests in this</p> <p>5 agreement; right?</p> <p>6 A. No. Dugaboy Investment Trust was a</p> <p>7 partner -- is a partner -- is Jim's -- Jim's</p> <p>8 member of HCRE, and it's pledged the balance of</p> <p>9 the collateral. So...</p> <p>10 Q. They're not a member -- they're not a</p> <p>11 member of this agreement; correct?</p> <p>12 MR. GAMEROS: Which agreement,</p> <p>13 John?</p> <p>14 MR. MORRIS: The one that's on the</p> <p>15 screen, the HCRE agreement.</p> <p>16 A. The SE Multifamily?</p> <p>17 Q. Yeah.</p> <p>18 A. Yeah, they're -- they're not. But</p> <p>19 we're talking, I thought, about HCRE's collateral</p> <p>20 package. And so I think Jim could make a</p> <p>21 determination what he wants to pledge as a member</p> <p>22 of HCRE.</p> <p>23 Q. Okay. So he decided to allocate</p> <p>24 \$291 million to HCRE; correct? Withdrawn.</p> <p>25 Let me ask it this way: When you</p>
<p>Page 140</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 received this, did you tell anybody that there</p> <p>3 was a mistake?</p> <p>4 A. No.</p> <p>5 Q. Did you review it?</p> <p>6 A. Yeah.</p> <p>7 Q. Did it reflect your understanding of</p> <p>8 what the terms were between Highland and HCRE?</p> <p>9 A. At the time it was signed, yes.</p> <p>10 Q. Okay. Did HCRE pay back the</p> <p>11 approximately \$40 million that it borrowed from</p> <p>12 NexBank as part of the capital contribution?</p> <p>13 A. I believe it did.</p> <p>14 Q. And where did it get the money to do</p> <p>15 that?</p> <p>16 A. It sold assets -- the remaining</p> <p>17 assets.</p> <p>18 Q. It sold assets on behalf of</p> <p>19 SE Multifamily; correct?</p> <p>20 A. That's right.</p> <p>21 Q. Okay. Did HCRE reach into its pocket</p> <p>22 for any portion of the approximately \$291 million</p> <p>23 that's reflected on this document? Any -- a</p> <p>24 single dollar, did it come out of HCRE's pocket?</p> <p>25 A. Sure.</p>	<p>Page 141</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. How much?</p> <p>3 A. I -- I don't know how much. But a</p> <p>4 portion of the initial 10 million or 12 million</p> <p>5 dollar -- million dollars of earnest money was --</p> <p>6 was partially funded by HCRE for the deal.</p> <p>7 Q. Anything else?</p> <p>8 A. I'm sorry?</p> <p>9 Q. Anything else other than that portion</p> <p>10 of the earnest money?</p> <p>11 A. Not that I -- not that I'm aware of.</p> <p>12 Q. Okay. Who else contributed to the</p> <p>13 earnest money you just mentioned?</p> <p>14 A. I think BH did, too.</p> <p>15 Q. And how much did BH contribute to</p> <p>16 that 10 or 12 million dollars?</p> <p>17 A. I bel- -- this is -- this is my</p> <p>18 recollection -- I believe of the 40 that went</p> <p>19 up -- or 30 or 40 that went up, we were -- we</p> <p>20 were 20 or so and they were 10.</p> <p>21 Q. Okay. I'm asking you -- it may be my</p> <p>22 questioning, sir, and if it is, I apologize. I</p> <p>23 really want to know how much money HCRE put into</p> <p>24 this deal out of its own pocket, not what it</p> <p>25 borrowed to fund and then repaid from the</p>

<p style="text-align: right;">Page 142</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 proceeds at the sale of SE Multifamily property.</p> <p>3 How much money did HCRE put into this</p> <p>4 deal out of its own pocket?</p> <p>5 A. I don't have the -- I don't have the</p> <p>6 specific number.</p> <p>7 Q. Is it more or less than \$5 million?</p> <p>8 A. I -- I honestly don't know. I -- we</p> <p>9 could -- we could find it but I don't -- I don't</p> <p>10 know sitting right here.</p> <p>11 Q. Is it more or less than \$1 million?</p> <p>12 A. Same answer. I don't know. I do</p> <p>13 know that it pledged every single asset that it</p> <p>14 had that it was -- that was available to be</p> <p>15 pledged.</p> <p>16 Q. And all of that -- the entire loan</p> <p>17 was repaid within a year; isn't that right?</p> <p>18 A. Oh, no, I don't think so. No, it was</p> <p>19 much longer than that.</p> <p>20 Q. Has the loan been repaid as of today?</p> <p>21 A. I think so.</p> <p>22 Q. When was the loan fully repaid?</p> <p>23 A. I saw correspondence on this. I'd --</p> <p>24 I'd just be guessing. I don't -- I don't</p> <p>25 remember.</p>	<p style="text-align: right;">Page 143</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. Wasn't the loan fully paid before</p> <p>3 November 2019?</p> <p>4 A. No, I doubt it. Are you talking</p> <p>5 about the KeyBank bridge?</p> <p>6 Q. Yeah.</p> <p>7 A. Yeah. No, I doubt it.</p> <p>8 Q. Let me restate it. Was the portion</p> <p>9 that's -- was allocated to HCRE for purposes of</p> <p>10 this agreement fully repaid back within a year?</p> <p>11 A. No.</p> <p>12 Q. Okay. Looking at -- at this</p> <p>13 document, did you ever tell Mr. Broaddus that you</p> <p>14 believed there was a mistake in this table?</p> <p>15 A. Not at the time it was entered into,</p> <p>16 no.</p> <p>17 Q. Did you ever tell him that?</p> <p>18 A. Ever? Like --</p> <p>19 Q. From -- from the date you received</p> <p>20 this document until today, did you ever say, Hey,</p> <p>21 Mr. Broaddus, you know that document you would</p> <p>22 create -- you created, it was wrong?</p> <p>23 A. Yeah. I think we -- we -- we all</p> <p>24 knew and all told each other that the -- the</p> <p>25 \$49,000 to receive a 46 percent interest was --</p>
<p style="text-align: right;">Page 144</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 was wrong. I think that was pretty evident, and</p> <p>3 that was discussed, yes.</p> <p>4 Q. But you knew it at the time he sent</p> <p>5 you this document; right?</p> <p>6 A. Yeah.</p> <p>7 Q. And you didn't tell him it was wrong</p> <p>8 at the time he sent you the document; right?</p> <p>9 A. You just asked me from the time it</p> <p>10 was signed until today.</p> <p>11 Q. You're saying everybody knew. So I'm</p> <p>12 asking you specifically, at the time he sent you</p> <p>13 this email, you thought that \$49 million capital</p> <p>14 contribution was accurately stated and you</p> <p>15 thought Highland's 46.06 percent interest was</p> <p>16 accurately stated; correct?</p> <p>17 A. Yeah, at the time of the agreement,</p> <p>18 that's right.</p> <p>19 Q. Gotcha. Okay. There's nothing</p> <p>20 ambiguous about this capital contributions</p> <p>21 schedule; right?</p> <p>22 A. No.</p> <p>23 Q. You knew exactly what Highland was</p> <p>24 credited as having contributed and you knew</p> <p>25 exactly what percentage interest it was getting</p>	<p style="text-align: right;">Page 145</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 under this draft of the contributions schedule;</p> <p>3 right?</p> <p>4 A. At the time it was entered into, yes.</p> <p>5 Q. Let's go to the next email, please,</p> <p>6 Exhibit 7.</p> <p>7 (Exhibit 7 was marked.)</p> <p>8 Q. Do you see this is an email from</p> <p>9 Mr. Thomas to Mr. Broaddus. Now you're not</p> <p>10 copied on this, but if you take a moment to read,</p> <p>11 I hope you'll agree that you'll see that this</p> <p>12 email concerns the waterfall that I think you</p> <p>13 referred to earlier and how -- and how</p> <p>14 distributions were going to be made.</p> <p>15 A. Yeah, I remember this discussion.</p> <p>16 Q. And do you remember just before the</p> <p>17 deal was signed, that BH Equities was concerned</p> <p>18 about the waterfall?</p> <p>19 A. Yeah.</p> <p>20 Q. And -- and did you personally</p> <p>21 participate in conversations about the waterfall</p> <p>22 at this time?</p> <p>23 A. Sure, yeah.</p> <p>24 Q. And do you recall that -- if we can</p> <p>25 scroll down a little bit -- BH Equities had made</p>

<p>Page 146</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 a proposal concerning the waterfall?</p> <p>3 A. Yeah.</p> <p>4 Q. Okay. And here's their version of</p> <p>5 6.1. Are you aware that Section 6.1 concerns the</p> <p>6 waterfall?</p> <p>7 A. Yeah.</p> <p>8 Q. Okay. And are you aware that people</p> <p>9 acting on behalf of the Highland group made a</p> <p>10 counter proposal?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Can we go to the next exhibit,</p> <p>13 Exhibit 8?</p> <p>14 (Exhibit 8 was marked.)</p> <p>15 Q. Do you see that at the bottom,</p> <p>16 there's an email from Mr. Chang to Mr. Broaddus?</p> <p>17 A. Yes.</p> <p>18 Q. And is it your understanding that</p> <p>19 notwithstanding the fact that it's Section 1.1</p> <p>20 instead of 6.1, that this is the waterfall that</p> <p>21 Highland provided to BH Equities as an</p> <p>22 alternative to the one we just looked at?</p> <p>23 A. The -- the email that we just looked</p> <p>24 at was just that, it was a email, it wasn't</p> <p>25 specific language.</p>	<p>Page 147</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. We can go back -- we can go back and</p> <p>3 look if you want. There was a whole proposal.</p> <p>4 It was -- they proposed the whole waterfall and</p> <p>5 you guys -- do you want to go back and look at</p> <p>6 it, we can do that.</p> <p>7 If we can go back to Exhibit 7,</p> <p>8 please. If we can go to the top of the email</p> <p>9 itself.</p> <p>10 Do you see Mr. Thomas tells</p> <p>11 Mr. Broaddus, Attached is what we proposed in</p> <p>12 October --</p> <p>13 A. Yeah.</p> <p>14 Q. -- try to handle this.</p> <p>15 A. Yeah. You -- you can go back to</p> <p>16 their -- their proposed language, if you don't</p> <p>17 mind, please.</p> <p>18 Q. Okay. Let's just scroll down a</p> <p>19 little bit. And this is their version of 6.1.</p> <p>20 So this is the way they wanted the waterfall to</p> <p>21 set up. Do I have that right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And if we can go back to the</p> <p>24 top of this --</p> <p>25 A. They --</p>
<p>Page 148</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. I'm sorry to interrupt. Go ahead,</p> <p>3 sir.</p> <p>4 A. No, that's all right. I -- go ahead.</p> <p>5 I get it.</p> <p>6 Q. Okay. So if we go back to the top of</p> <p>7 this email, you'll see he sends this at, I guess,</p> <p>8 3/15 at 9:00 in the evening. Do you see that?</p> <p>9 Now, I can't adjust for time change as I don't</p> <p>10 know what time zone.</p> <p>11 A. Yeah, of course.</p> <p>12 Q. But he says -- now, if we go to the</p> <p>13 next email, you understood these discussions</p> <p>14 about the waterfall were ongoing right up until</p> <p>15 the last minute; right?</p> <p>16 A. Yes.</p> <p>17 Q. You'll see that Mr. Chang sent -- had</p> <p>18 sent this email to Mr. Broaddus earlier in the</p> <p>19 date on the 15th; right?</p> <p>20 A. Yes.</p> <p>21 Q. And if we could scroll to the top,</p> <p>22 all Mr. Broaddus does is forward this to</p> <p>23 Mr. Thomas at 11:00 on the 15th; correct?</p> <p>24 A. Correct.</p> <p>25 Q. And is it fair to say, based on your</p>	<p>Page 149</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 knowledge and recollection as -- and -- and in</p> <p>3 your capacity as HCRE's 30(b)(6) witness, that</p> <p>4 the version that Mr. Chang drafted is the version</p> <p>5 that ultimately made its way into the agreement?</p> <p>6 A. Yeah.</p> <p>7 Q. Okay. And the language that</p> <p>8 Mr. Chang forwarded to Mr. Broaddus, that was</p> <p>9 language that was drafted by the Highland side;</p> <p>10 correct?</p> <p>11 A. The Highland tax team, that's</p> <p>12 correct.</p> <p>13 Q. And at this point, the Highland tax</p> <p>14 team is working on behalf of Highland and HCRE;</p> <p>15 correct?</p> <p>16 A. Correct.</p> <p>17 Q. Everybody's rowing in the same</p> <p>18 direction -- direction for the Highland group of</p> <p>19 companies that's the subject to this agreement;</p> <p>20 correct?</p> <p>21 A. At -- at this date, that's right.</p> <p>22 Q. That's right. And --</p> <p>23 A. It changed pretty dramatically six</p> <p>24 months later.</p> <p>25 Q. It did, didn't it. And you didn't</p>

<p>Page 150</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 quite -- and you didn't anticipate that at the</p> <p>3 time; correct?</p> <p>4 A. That Highland filed bankruptcy?</p> <p>5 Q. Correct.</p> <p>6 A. Believe me, I did not.</p> <p>7 Q. That's right. That's right. And</p> <p>8 that -- that event was not foresee -- you did not</p> <p>9 personally foresee that event in March of 2019;</p> <p>10 correct?</p> <p>11 A. I did not personally, no.</p> <p>12 Q. Okay. And but for that bankruptcy</p> <p>13 filing, we wouldn't be here today; is that fair?</p> <p>14 A. Yeah, I think that's fair.</p> <p>15 Q. Okay. So the dispute really is a</p> <p>16 consequence of the bankruptcy filing -- do I have</p> <p>17 that right? -- from your perspective?</p> <p>18 A. Yeah, I mean, I think that's right.</p> <p>19 Q. Okay. So it was -- it was the</p> <p>20 Highland side that has -- do you see in Section A</p> <p>21 here in Mr. Chang's email, it has the allocation</p> <p>22 that we just looked at from the schedule that</p> <p>23 Mr. Broaddus prepared; correct?</p> <p>24 A. Correct.</p> <p>25 Q. And at the time you believed that</p>	<p>Page 151</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 this allocation of distributable cash was fair,</p> <p>3 reasonable, and consistent with the parties'</p> <p>4 intent; correct?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. So did anything change your</p> <p>7 view on that other than the filing of the</p> <p>8 bankruptcy by Highland?</p> <p>9 A. I mean, yeah, I -- I -- are you</p> <p>10 talking about me personally or me -- or I guess</p> <p>11 it's the same -- same answer.</p> <p>12 Q. Yeah, it's a fair question. But in</p> <p>13 your capacity as a 30(b)(6) witness, is there any</p> <p>14 reason to believe that this -- you know, what</p> <p>15 caused HCRE to believe that this was wrong other</p> <p>16 than the bankruptcy filing as we just discussed?</p> <p>17 Anything else? Any other fact that came to light</p> <p>18 that you didn't have at the time?</p> <p>19 A. Yeah, I mean, ultimately, again,</p> <p>20 making a 400 million percent IRR on a real estate</p> <p>21 transaction would not be a just result in my --</p> <p>22 in my view and HCRE's view, putting in 49,000,</p> <p>23 receiving at a minimum 1.14 million 30 days</p> <p>24 later, plus additional, you know, 46 percent</p> <p>25 interest down the line, that's not -- I don't</p>
<p>Page 152</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 know how that can stand up in a -- in a rational</p> <p>3 investor's mind.</p> <p>4 Q. Well, but are you a rational</p> <p>5 investors?</p> <p>6 A. Yeah, I think so.</p> <p>7 Q. And that's exactly what you agreed to</p> <p>8 in March of 2019; correct?</p> <p>9 A. Yeah, at the time, that's correct.</p> <p>10 Q. Okay. Okay. And so the only</p> <p>11 thing that happened --</p> <p>12 A. But under the circumstances it --</p> <p>13 Q. The only thing that's happened is</p> <p>14 that Highland has filed for bankruptcy, and HCRE</p> <p>15 and Highland were no longer related entities</p> <p>16 under the common control of Mr. Dondero; isn't</p> <p>17 that right?</p> <p>18 A. No, that's not right.</p> <p>19 Q. Okay. So tell me -- tell me the</p> <p>20 basis on which HCRE contends today that the</p> <p>21 allocations set forth in Mr. Chang's email was</p> <p>22 wrong at the time they made it.</p> <p>23 Is there any fact that you're aware</p> <p>24 of that you didn't have on March 15, 2019, that</p> <p>25 leads you to believe today that that allocation</p>	<p>Page 153</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 is incorrect?</p> <p>3 A. I mean, yeah, there's 332 million of</p> <p>4 debt outstanding that had to be retired.</p> <p>5 Q. Did you know -- did you know that at</p> <p>6 the time?</p> <p>7 A. There wasn't -- I did. There was no</p> <p>8 other additional services provided by Highland</p> <p>9 really other than this. This is the last they</p> <p>10 did and -- and look where we are. So, I mean,</p> <p>11 this -- I wouldn't characterize that as -- as an</p> <p>12 equitable percentage for -- for the work or -- or</p> <p>13 the whatever you want to call the -- the</p> <p>14 co-borrowing or whatever, purported tax benefits,</p> <p>15 capital flexibility, they didn't do anything.</p> <p>16 Q. Did you think to make it a condition</p> <p>17 of their allocations to do any of the things you</p> <p>18 just described?</p> <p>19 A. There was -- there wasn't going to be</p> <p>20 any distributable cash for years because you had</p> <p>21 to retire debt, \$322 million of debt and sell 20</p> <p>22 assets over the course of years before you got</p> <p>23 into this place, and Highland didn't do any of</p> <p>24 that.</p> <p>25 Q. Can I just ask you this question:</p>

<p>Page 154</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Can you please identify a fact that HCRE did not</p> <p>3 have when it entered into this agreement that</p> <p>4 causes it today to say that there was a mistake?</p> <p>5 A. Yeah. I mean, the intent was always</p> <p>6 for this to be a living document and -- and</p> <p>7 everyone knew that.</p> <p>8 Q. Can you --</p> <p>9 A. The tax team, the legal team, the</p> <p>10 accounting team, the finance team.</p> <p>11 Q. What does that mean, a legal doc --</p> <p>12 living document? What does that mean?</p> <p>13 A. It means as those facts change, as</p> <p>14 the circumstances change, as assets are held,</p> <p>15 sold, refinanced, that the economics can change.</p> <p>16 It's not unique to this transaction, by the way.</p> <p>17 Q. Did you on behalf of HCRE do anything</p> <p>18 to make sure that intent was reflected in the</p> <p>19 documentation?</p> <p>20 A. I thought it was, because the people</p> <p>21 that were my partners all understood what I</p> <p>22 understood, there would be a living document.</p> <p>23 Q. Did you do anything to make sure that</p> <p>24 it was a living document?</p> <p>25 A. I -- I relied on people to -- to make</p>	<p>Page 155</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 sure that it was.</p> <p>3 Q. You're a lawyer; right?</p> <p>4 A. Wasn't a very good one.</p> <p>5 Q. So you made a mistake?</p> <p>6 A. I think we all made a mistake.</p> <p>7 That's the point.</p> <p>8 Q. Is there any mistake that was made</p> <p>9 other than the failure to include a provision</p> <p>10 that would have allowed this agreement to be</p> <p>11 amended, any other mistake you can identify?</p> <p>12 A. I think that's the biggest one. The</p> <p>13 intent was it -- for it to live on and adjust it</p> <p>14 as economic -- economic conditions changed. That</p> <p>15 intent was reflected. Everyone looked at this.</p> <p>16 No one caught it.</p> <p>17 Q. Do you think that you need a</p> <p>18 provision saying that it can be amended in order</p> <p>19 to amend the agreement? Can't you amend the</p> <p>20 agreement without that provision? Can't you</p> <p>21 amend the agreement anytime you have the</p> <p>22 agreement of all of the member?</p> <p>23 A. You can if there was automatic stay</p> <p>24 in place.</p> <p>25 Q. Did anybody on behalf of HCRE ever</p>
<p>Page 156</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 request Highland to amend this agreement?</p> <p>3 A. During what? Prepetition?</p> <p>4 Postpetition?</p> <p>5 Q. Let's talk about the history of the</p> <p>6 world. Did anybody from HCRE ever ask anybody</p> <p>7 from Highland to amend this agreement at any time</p> <p>8 in the history of the world?</p> <p>9 A. I recall that I testified earlier</p> <p>10 that I asked our internal legal team to review</p> <p>11 these documents to make sure that there was no</p> <p>12 issues with respect to the -- the petition filing</p> <p>13 that could have caused contagion risk amongst</p> <p>14 certainly of the -- the KeyBank loan agreement.</p> <p>15 So had I not gotten them off of the KeyBank loan</p> <p>16 agreement, we might not be sitting here saying</p> <p>17 that this 46 percent interest is worth anything.</p> <p>18 MR. MORRIS: I'm going to move to</p> <p>19 strike, and I'll just ask you to listen</p> <p>20 carefully to my question.</p> <p>21 A. You got it.</p> <p>22 Q. Do you know whether HCRE ever asked</p> <p>23 the other members to the SE Multifamily agreement</p> <p>24 that it wanted to amend the document for the</p> <p>25 purpose of adjusting the allocated percentage</p>	<p>Page 157</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 interests?</p> <p>3 A. Ever.</p> <p>4 Q. Yeah.</p> <p>5 A. Yeah, I'd ask -- I'd ask it right</p> <p>6 now.</p> <p>7 Q. But have you ever done it before</p> <p>8 right now?</p> <p>9 A. I -- other than what -- what I said</p> <p>10 about the -- the reverse due diligence or the</p> <p>11 prepetition review.</p> <p>12 Q. I'm not asking about diligence.</p> <p>13 Please, it's a very simple question.</p> <p>14 Did HCRE ever ask the other members</p> <p>15 in SE Multifamily to amend the amended and</p> <p>16 restated agreement for purposes of changing the</p> <p>17 allocation of membership interests?</p> <p>18 A. We didn't need to.</p> <p>19 MR. MORRIS: I move to strike.</p> <p>20 Q. I'm going to ask you the question</p> <p>21 again. It is a factual question.</p> <p>22 A. It's a factual answer.</p> <p>23 Q. To the best of your knowledge, as</p> <p>24 HCRE's corporate representative, did HCRE ever</p> <p>25 ask either of the members of the SE Multifamily</p>

<p>Page 158</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 agreement whether or not they would consent to an</p> <p>3 amendment for purposes of changing the allocation</p> <p>4 of interests? You either did or you didn't.</p> <p>5 A. No. No, because we didn't need to</p> <p>6 because we knew it was a living document to the</p> <p>7 agreement.</p> <p>8 MR. MORRIS: But I move to</p> <p>9 strike -- I move to strike everything after</p> <p>10 "no." It's going to be a longer day -- I'm</p> <p>11 sure counsel will let you know, it will be</p> <p>12 a longer day when you continue to give the</p> <p>13 answers you want as opposed to answers to</p> <p>14 my questions.</p> <p>15 Let's take a break now. It's --</p> <p>16 it's 12:00 -- it's 1:05. Let's come back</p> <p>17 at 1:30, please.</p> <p>18 THE VIDEOGRAPHER: Okay. The time</p> <p>19 is 12:07 p.m. and we're going off the</p> <p>20 record. Excuse me, 1:07 p.m. and we're</p> <p>21 going off the record.</p> <p>22 (Break from 1:06 p.m. to 1:31 p.m.)</p> <p>23 THE VIDEOGRAPHER: The time is</p> <p>24 1:33 p.m. and we are back on the record.</p> <p>25 Q. (BY MR. MORRIS) Mr. McGraner, did</p>	<p>Page 159</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 you talk to anybody about your deposition during</p> <p>3 our break?</p> <p>4 A. Not -- no, sir, I didn't.</p> <p>5 Q. Okay. Let's -- let's cut to the</p> <p>6 chase now and let's take a look at the executed</p> <p>7 Amended and Restated LLC Agreement.</p> <p>8 MR. MORRIS: If we can put</p> <p>9 Exhibit 9 up on the screen.</p> <p>10 (Exhibit 9 was marked.)</p> <p>11 Q. I'll remind you, Mr. McGraner, if at</p> <p>12 any time you think there is a portion of this</p> <p>13 document that you think you need to review in</p> <p>14 order to give a complete and accurate and</p> <p>15 truthful answer, will you let me know that.</p> <p>16 A. Of course.</p> <p>17 Q. Okay.</p> <p>18 MR. MORRIS: Can we just quickly go</p> <p>19 to page 18 so we can show Mr. McGraner that</p> <p>20 this is the executed version.</p> <p>21 Q. All right. Do you see the signature</p> <p>22 lines there by Mr. Dondero on behalf of Highland</p> <p>23 and HCRE Partners?</p> <p>24 A. I do.</p> <p>25 Q. And do you understand that despite</p>
<p>Page 160</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 the faint nature of the signatures, these are</p> <p>3 Mr. Dondero's signatures and this is the final</p> <p>4 agreement?</p> <p>5 A. I do.</p> <p>6 Q. Okay. And you understood in March of</p> <p>7 2019 that he was going to bind HCRE and Highland</p> <p>8 to this agreement; correct?</p> <p>9 A. I did.</p> <p>10 Q. Did you have any discussions with him</p> <p>11 about any of the terms of this agreement before</p> <p>12 he put his pen to paper?</p> <p>13 A. Sorry, the computer's acting up</p> <p>14 again. Can you repeat that, please.</p> <p>15 Q. Sure. Did you speak with Mr. Dondero</p> <p>16 about any aspect of this agreement before he</p> <p>17 signed it?</p> <p>18 A. No.</p> <p>19 Q. Did you review it with him before he</p> <p>20 signed it?</p> <p>21 A. Not with him.</p> <p>22 Q. Did you review it of your own accord</p> <p>23 before you understood he was signing it?</p> <p>24 A. I reviewed the economic provision</p> <p>25 again, the waterfall.</p>	<p>Page 161</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. Any -- any part of the agreement</p> <p>3 other than Section 6.1 and the waterfall that you</p> <p>4 recall reviewing?</p> <p>5 A. That was the area of my focus.</p> <p>6 Q. Okay. But you had seen Schedule A in</p> <p>7 its form from earlier the same day that this was</p> <p>8 signed --</p> <p>9 A. Sure.</p> <p>10 Q. -- right?</p> <p>11 A. Sure.</p> <p>12 Q. Okay. And were the same three law</p> <p>13 firms that you identified earlier involved in the</p> <p>14 preparation of this agreement?</p> <p>15 A. As far as I know.</p> <p>16 Q. So that's Winston --</p> <p>17 A. Wick and Hunton.</p> <p>18 Q. -- Wick and Hunton. All right. And</p> <p>19 to the best of your knowledge and recollection</p> <p>20 and as HCRE's 30(b)(6) witness, would it be fair</p> <p>21 to say that those three law firms were all</p> <p>22 working jointly on behalf of Highland and HCRE in</p> <p>23 connection with the preparation of this document?</p> <p>24 A. Yes.</p> <p>25 Q. And would that be true of all of the</p>

<p>Page 162</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 people in the Highland platform who were working</p> <p>3 together to try to finalize this agreement?</p> <p>4 A. Yes.</p> <p>5 Q. So is it fair to say that neither</p> <p>6 Highland nor HCRE received any independent advice</p> <p>7 separate and apart from the other entity in</p> <p>8 connection with this agreement?</p> <p>9 A. Yes.</p> <p>10 Q. And there wasn't, to the best of your</p> <p>11 recollection, a singular person charged with the</p> <p>12 responsibility for looking out for solely HCRE's</p> <p>13 interests; correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And there wasn't a singular person</p> <p>16 who was charged, to the best of your knowledge,</p> <p>17 with looking out for Highland's interests in</p> <p>18 connection with this agreement; correct?</p> <p>19 A. That's correct.</p> <p>20 Q. Let's just look at a few of the</p> <p>21 provisions of this document. If we can go to</p> <p>22 Schedule A. Yeah, right there.</p> <p>23 Do you see Schedule A, sir?</p> <p>24 A. I do.</p> <p>25 Q. Can you confirm for me that the tox</p>	<p>Page 163</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 -- top box relating to the members' names and</p> <p>3 capital contributions and percentage interests is</p> <p>4 consistent with the version of the document that</p> <p>5 Mr. Broaddus sent to you and to BH Equities</p> <p>6 earlier on March 15th?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So you were aware before the</p> <p>9 agreement was signed that this capital</p> <p>10 contribution table was going to be included;</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And there's nothing ambiguous about</p> <p>14 the information that's on Schedule A, would you</p> <p>15 agree with that?</p> <p>16 A. I would.</p> <p>17 Q. Is there anything about Schedule A</p> <p>18 that you do not understand today?</p> <p>19 A. No.</p> <p>20 Q. Okay. And this -- to the best of</p> <p>21 your knowledge and understanding as HCRE's</p> <p>22 30(b)(6) witness, Schedule A reflects the</p> <p>23 parties' intent at the time the agreement was</p> <p>24 signed; correct?</p> <p>25 A. Yes.</p>
<p>Page 164</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. Okay. Can we go to Section 1.7,</p> <p>3 please. Do you see 1.7 concerns company</p> <p>4 ownership?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And you are aware that this</p> <p>7 provision was in the agreement before it was</p> <p>8 signed; correct?</p> <p>9 A. Yes.</p> <p>10 Q. And there's nothing ambiguous about</p> <p>11 Section 1.7 from your perspective; correct?</p> <p>12 A. No.</p> <p>13 Q. And at the time the agreement was</p> <p>14 signed, did HCRE understand that Section 1.7</p> <p>15 accurately reflected the parties' intent?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Go to 2.2(a), please. Do you</p> <p>18 see there's a section for additional capital</p> <p>19 contributions?</p> <p>20 A. Yes.</p> <p>21 Q. Did you understand before this</p> <p>22 agreement was signed that SE Multifamily would</p> <p>23 never look to HCRE or Highland for additional</p> <p>24 capital contributions?</p> <p>25 A. I mean, no, I don't think that was --</p>	<p>Page 165</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 that wasn't my understanding.</p> <p>3 Q. Do you understand that Section 2.2(a)</p> <p>4 committed additional count -- capital -- capital</p> <p>5 calls to Liberty?</p> <p>6 A. Yes.</p> <p>7 Q. Did you understand that the manager</p> <p>8 wasn't given the right under 2.2(a) to make</p> <p>9 capital calls of HCRE or Highland?</p> <p>10 A. Yeah, that's what it says.</p> <p>11 Q. And that was consistent with your</p> <p>12 understanding of the parties' intent before they</p> <p>13 signed this agreement; correct?</p> <p>14 A. Yeah, that's right.</p> <p>15 Q. Go to 3.1, please. Did you</p> <p>16 understand before Mr. Dondero signed this</p> <p>17 agreement that he would be the manager of</p> <p>18 SE Multifamily in his capacity as an officer of</p> <p>19 HCRE?</p> <p>20 A. I did.</p> <p>21 Q. And there's nothing ambiguous about</p> <p>22 that provision, is there?</p> <p>23 A. No.</p> <p>24 Q. That was the intent of the parties;</p> <p>25 correct?</p>

<p>Page 166</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. Yes.</p> <p>3 Q. And under 3.2, Mr. Dondero, in his</p> <p>4 capacity as an officer of HCRE and as the manager</p> <p>5 of SE Multifamily, was given the control that's</p> <p>6 set forth in Section 3.2; correct?</p> <p>7 A. Correct.</p> <p>8 Q. And nobody else was given control of</p> <p>9 SE Multifamily except for Mr. Dondero in his</p> <p>10 capacity as an officer of HCRE?</p> <p>11 A. Correct.</p> <p>12 Q. And that never changed; correct?</p> <p>13 A. As far as I know.</p> <p>14 Q. And as far as you know, Section 3.2</p> <p>15 reflected the parties' intent at the time this</p> <p>16 agreement was entered into; correct?</p> <p>17 A. Correct.</p> <p>18 Q. Let's go to 6.1(a), please. All</p> <p>19 right. 6.1(a) refers to distributable cash.</p> <p>20 Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. And will you agree that this</p> <p>23 provision is consistent with the provision that</p> <p>24 Mr. Chang forwarded to Mr. Broaddus on</p> <p>25 March 15th?</p>	<p>Page 167</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. I agree.</p> <p>3 Q. And you were aware that this</p> <p>4 provision was going to be included in the</p> <p>5 agreement before Mr. Dondero signed it; right?</p> <p>6 A. Yeah, at the time, yes.</p> <p>7 Q. And there's nothing ambiguous about</p> <p>8 Section 6.1(a) from your perspective; is that</p> <p>9 fair?</p> <p>10 A. That -- that's fair.</p> <p>11 Q. And to the best of your knowledge and</p> <p>12 understanding as HCRE's 30(b)(6) witness today,</p> <p>13 Section 6.1(a) reflects the intent of the parties</p> <p>14 -- correct? -- at the time the agreement was</p> <p>15 signed?</p> <p>16 A. Agree.</p> <p>17 Q. All right. Can we scroll down just a</p> <p>18 little bit to 6.1 -- hold on one second -- okay.</p> <p>19 6.1(b) says that "Net cash from the sale,</p> <p>20 refinancing, or other dis- -- disposition of a</p> <p>21 specified company asset shall be distributed to</p> <p>22 the members in the proration of their capital</p> <p>23 percentage interests with -- with respect to such</p> <p>24 specified company asset."</p> <p>25 Do you see that?</p>
<p>Page 168</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. I do.</p> <p>3 Q. Is that another way of saying that</p> <p>4 cash from the sale or refinancing or other</p> <p>5 disposition of a specified company asset will be</p> <p>6 distributed pro rata in accordance with the</p> <p>7 percentage interests on Schedule A?</p> <p>8 A. Assuming capital percentage interest</p> <p>9 is defined as the interest on Schedule A, I</p> <p>10 agree.</p> <p>11 Q. Okay. And was it your understanding</p> <p>12 that that was the intent of the parties at the</p> <p>13 time this document was entered into?</p> <p>14 A. Yeah.</p> <p>15 Q. Okay. Can we go to 6.4(a), please.</p> <p>16 I'll skip that. Actually, let me just ask this</p> <p>17 question: In 6.4(a), is there anything ambiguous</p> <p>18 from your perspective about that provision?</p> <p>19 A. No.</p> <p>20 Q. From your perspective as HCRE's</p> <p>21 30(b)(6) witness, did you understand that 6.4(a)</p> <p>22 reflected the intent of the parties at the time</p> <p>23 this agreement was signed?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. Let's go to 8.2, please. Do</p>	<p>Page 169</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 you see 8.2 provides, among other things, that</p> <p>3 the manager shall cause to be prepared and filed</p> <p>4 all tax returns on behalf of SE Multifamily, and</p> <p>5 I'm summarizing?</p> <p>6 A. Yes.</p> <p>7 Q. You were aware that this provision</p> <p>8 was going to be included before Mr. Dondero</p> <p>9 signed this document; correct?</p> <p>10 A. Yes.</p> <p>11 Q. Is there anything ambiguous about</p> <p>12 Section 8.2 from your perspective?</p> <p>13 A. No.</p> <p>14 Q. Would you agree as HCRE's</p> <p>15 Rule 30(b)(6) witness, that Section 8.2 was</p> <p>16 consistent with the parties' intent?</p> <p>17 A. Again, at the time of the agreement,</p> <p>18 yeah.</p> <p>19 Q. Okay. Can we go to 9.3(e), please.</p> <p>20 So 9.3, is it fair to say is -- is the</p> <p>21 liquidation waterfall?</p> <p>22 A. Fair.</p> <p>23 Q. Okay. And am I reading this</p> <p>24 correctly that at the bottom of the waterfall</p> <p>25 after 9.3(a) through (d) are taken into account,</p>

<p>Page 170</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 any remaining assets will be distributed</p> <p>3 consistently with the percentage interests set</p> <p>4 forth on Schedule A?</p> <p>5 A. Yes.</p> <p>6 Q. And you understood that at the time</p> <p>7 this agreement was signed; correct?</p> <p>8 A. Yep.</p> <p>9 Q. And there's nothing ambiguous about</p> <p>10 that provision; correct?</p> <p>11 A. Correct.</p> <p>12 Q. And you understood that this</p> <p>13 provision reflected the parties' intent; correct?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. To the best of your knowledge,</p> <p>16 has this agreement ever been amended?</p> <p>17 A. Not that I'm aware of.</p> <p>18 Q. Okay. Did HCRE ever request an</p> <p>19 amendment of any kind to any other party of the</p> <p>20 agreement that we're looking at right now? Did</p> <p>21 it ever ask for an amendment?</p> <p>22 A. Again, other than to -- to review the</p> <p>23 documents for -- in connection with the</p> <p>24 bankruptcy, no.</p> <p>25 Q. Okay. And in connection with that</p>	<p>Page 171</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 review of the doc -- of the documents in</p> <p>3 connection with the bankruptcy, no request was</p> <p>4 made to -- to amend this agreement; correct?</p> <p>5 A. Not specifically, no.</p> <p>6 Q. Okay. Are you prepared to testify as</p> <p>7 HCRE's 30(b)(6) witness with regard to</p> <p>8 distributions that have been made by</p> <p>9 SE Multifamily?</p> <p>10 A. Sure.</p> <p>11 Q. SE Multifamily made distributions</p> <p>12 after the date of this agreement; correct?</p> <p>13 A. Only to satisfy debt.</p> <p>14 Q. Those are distributions; correct?</p> <p>15 A. Yeah, I just want to make sure we're</p> <p>16 -- we're using the term, you know, correctly or</p> <p>17 we mean the same thing.</p> <p>18 Q. Okay. And -- and the distributions</p> <p>19 that were made to repay debt are distributions</p> <p>20 that are part of the waterfall that you</p> <p>21 specifically had an interest in; correct?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Who authorized the making of</p> <p>24 distributions?</p> <p>25 A. Either Jim or myself.</p>
<p>Page 172</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. Nobody else was authorized to make a</p> <p>3 distribution from SE Multifamily other than you</p> <p>4 and Mr. Dondero; correct?</p> <p>5 A. That's right.</p> <p>6 Q. When you made it -- when you</p> <p>7 authorized the distribution from SE Multifamily,</p> <p>8 did you do so on your own or did you obtain</p> <p>9 Mr. Dondero's agreement in advance?</p> <p>10 A. Generally on my own with -- with --</p> <p>11 but he knew -- he knew what the business plan</p> <p>12 was.</p> <p>13 Q. And he knew -- he knew -- withdrawn.</p> <p>14 Did he know in advance of each</p> <p>15 distribution that the distribution was going to</p> <p>16 be made?</p> <p>17 A. I'm not sure if he was aware, if he</p> <p>18 knew.</p> <p>19 Q. Did he ever -- did he ever give you</p> <p>20 instructions as to whether to make a</p> <p>21 distribution?</p> <p>22 A. No, we -- we just had to pay down the</p> <p>23 debt. So...</p> <p>24 Q. Did he ever give you instructions as</p> <p>25 to whether or not to make distributions as to</p>	<p>Page 173</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Highland?</p> <p>3 A. No.</p> <p>4 Q. Okay. Can you describe for me the</p> <p>5 other people who were involved in -- not making</p> <p>6 the decision but -- but involved in the topic of</p> <p>7 distributions -- the amount? the date? the</p> <p>8 parties?</p> <p>9 A. In -- in general terms?</p> <p>10 Q. Yeah.</p> <p>11 A. Yeah, to the extent an asset was sold</p> <p>12 or there was free cash flow that was above and</p> <p>13 beyond what was needed to pay operating expenses,</p> <p>14 there was a group of folks here at NexPoint and</p> <p>15 at BH that would make that -- that -- or come up</p> <p>16 with a calculation, if you will, of what we could</p> <p>17 -- what we could pay down or what we could send</p> <p>18 to -- to the debt -- the lenders. Those -- those</p> <p>19 people were largely I think Bonner McDermott on</p> <p>20 my team, Ken Superczynski at BH who's now</p> <p>21 retired, probably Sean Jacobs -- Jacobson at BH.</p> <p>22 Generally I think that's the -- that's the group</p> <p>23 that came up with the calcs.</p> <p>24 Q. Okay. Do you recall that the topic</p> <p>25 of distributions came up between the Highland</p>

<p>Page 174</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 side and BH Equities about -- later in 2019?</p> <p>3 A. Vaguely.</p> <p>4 Q. Okay. Let's see if we can refresh</p> <p>5 your recollection a bit. Let's take a look at</p> <p>6 Exhibit 10, please.</p> <p>7 (Exhibit 10 was marked.)</p> <p>8 MR. MORRIS: If we can scroll down</p> <p>9 a little bit. Keep going. Let's just go</p> <p>10 to the bottom.</p> <p>11 Q. Okay. So were you aware in -- in</p> <p>12 November 2000 -- I guess it's 2020 -- were you</p> <p>13 aware in November 2020, that there were</p> <p>14 discussions about distributions to repay debt?</p> <p>15 A. They were always ongoing. So...</p> <p>16 Q. Okay. And --</p> <p>17 A. Generally, yes.</p> <p>18 MR. MORRIS: All right. Scroll up,</p> <p>19 please. Keep going.</p> <p>20 Q. (BY MR. MORRIS) So -- so do you see</p> <p>21 on November 10th, you're added to the email</p> <p>22 string?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And a couple of days later,</p> <p>25 there's a follow-up from BH management circling</p>	<p>Page 175</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 up to see what the NexPoint team's availability</p> <p>3 is to discuss distributions.</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. So that's the 12th. Keep going.</p> <p>7 Okay. So a week later Mr. McDermott writes to</p> <p>8 BH Equities that "They have confirmed internally</p> <p>9 that you're standing by your position that</p> <p>10 distributions may be returned to BH and HCRE in</p> <p>11 order to extinguish their debts."</p> <p>12 Is that a position that -- that HCRE</p> <p>13 took?</p> <p>14 A. Yes.</p> <p>15 Q. And do you know who Mr. McDermott was</p> <p>16 referring to when he used the -- the word "we"?</p> <p>17 A. No.</p> <p>18 Q. So was it HCRE's position in</p> <p>19 November 2020 that SE Multifamily could make</p> <p>20 distributions to extinguish debts?</p> <p>21 A. Yes.</p> <p>22 Q. What was that based on?</p> <p>23 A. (No verbal response.)</p> <p>24 Q. Why did -- yeah, let me ask a better</p> <p>25 question.</p>
<p>Page 176</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Why did HCRE believe in November 2020</p> <p>3 that distributions could be returned to B&H and</p> <p>4 HCRE in order to extinguish their debts?</p> <p>5 A. That was a consistent with the past</p> <p>6 practices of what we've been doing since we</p> <p>7 closed --</p> <p>8 Q. Well, but that's --</p> <p>9 A. -- of course.</p> <p>10 Q. They had the debt repaid first under</p> <p>11 the waterfall; right?</p> <p>12 A. Right.</p> <p>13 Q. And HCRE did not take the position</p> <p>14 that Highland's bankruptcy prohibited the return</p> <p>15 of capital that was used, you know, that was --</p> <p>16 that was debt financed; correct?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. Is there any reason -- do you</p> <p>19 know what Highland's -- the source of Highland's</p> <p>20 \$49,000 was? Is that debt or did it come out of</p> <p>21 their pocket?</p> <p>22 A. I'm sure they had 49 grand laying</p> <p>23 around back in 2018.</p> <p>24 Q. You are or you're not?</p> <p>25 A. No, I'm unsure.</p>	<p>Page 177</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. So it wasn't debt financed. Do I</p> <p>3 have that right?</p> <p>4 A. I don't know that specifically,</p> <p>5 but...</p> <p>6 Q. And then the next sentence says, "The</p> <p>7 HCMLP bankruptcy is temporarily inhibiting our</p> <p>8 ability to distribute a return of equity at this</p> <p>9 time."</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. What's the basis for that position?</p> <p>13 A. I think it was our position that it</p> <p>14 was in just bankruptcy, there's a lot going on</p> <p>15 that we didn't want to -- we didn't want to try</p> <p>16 to -- we thought it was better just to let it</p> <p>17 resolve itself and keep the -- keep the capital</p> <p>18 and not make -- not make any other distribution.</p> <p>19 Q. Did -- did -- is it HCRE's position</p> <p>20 that there was a legal impediment that was caused</p> <p>21 by the bankruptcy filing that prevented the</p> <p>22 distribution of equity -- equity distribution?</p> <p>23 A. I think all sides were concerned that</p> <p>24 this -- any issue, frankly, would turn into more</p> <p>25 litigation.</p>

<p>Page 178</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. Did you -- was that ever discussed</p> <p>3 with Highland in November 2020? When you say all</p> <p>4 sides, did you mean to include Highland or no?</p> <p>5 A. Yeah.</p> <p>6 Q. And who from Highland -- who from</p> <p>7 Highland said that distributions shouldn't be</p> <p>8 made?</p> <p>9 A. I didn't say that.</p> <p>10 Q. So you said all parties agreed. So</p> <p>11 I'm asking you who agreed on behalf of Highland</p> <p>12 that distributions should not be made?</p> <p>13 A. Yeah, that's not what I said.</p> <p>14 Q. What did you say?</p> <p>15 A. That I think all sides were concerned</p> <p>16 that any issue would spark more contentious</p> <p>17 litigation.</p> <p>18 Q. And -- and is Highland one of those</p> <p>19 sides? Or is it just HCRE and BH Equities?</p> <p>20 A. No, I'm including Highland in that.</p> <p>21 Q. So who on behalf of Highland</p> <p>22 expressed this concern?</p> <p>23 A. I spoke to Fred Caruso at DSI about</p> <p>24 this.</p> <p>25 Q. And Fred said please don't make --</p>	<p>Page 179</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 don't make distributions because it would lead to</p> <p>3 litigation?</p> <p>4 A. I said -- I think we both said that</p> <p>5 we don't want to talk about it at this time, it</p> <p>6 was our perspective. I guess, he answered to</p> <p>7 someone and I answer to someone, and it didn't</p> <p>8 seem like it was worth the fight -- another</p> <p>9 fight.</p> <p>10 Q. Do you have that in writing anywhere?</p> <p>11 A. You can ask Fred if he has it.</p> <p>12 Q. I'm asking you -- I'm asking you do</p> <p>13 you recall communicating in writing to Mr. Caruso</p> <p>14 that he expressed any concern at all about making</p> <p>15 distributions from SE Multifamily where he said</p> <p>16 that wouldn't be a good idea?</p> <p>17 A. I don't -- it was a phone</p> <p>18 conversation. I don't -- I think I just told you</p> <p>19 that's what we said. That's -- that's how it</p> <p>20 went.</p> <p>21 Q. Does anybody -- did anybody else</p> <p>22 participate in this phone conversation?</p> <p>23 A. No, just -- it was just us.</p> <p>24 Q. Just you and Mr. Caruso. Do I have</p> <p>25 that right?</p>
<p>Page 180</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. You have that right.</p> <p>3 Q. And during that conversation,</p> <p>4 Mr. Caruso said, Yeah, I agree with you, we</p> <p>5 shouldn't make any distributions from</p> <p>6 SE Multifamily because that might lead to</p> <p>7 litigation? Did he say that in substance or</p> <p>8 agree with you on that topic?</p> <p>9 A. No. We just said we weren't going to</p> <p>10 do anything. We weren't going to distribute</p> <p>11 anything at the time, there would be a fight over</p> <p>12 the percentages.</p> <p>13 Q. Who would be having the fight?</p> <p>14 A. The same people that are currently</p> <p>15 having the fight.</p> <p>16 Q. So it wasn't the bankruptcy that</p> <p>17 inhibited the ability; it was just the decision</p> <p>18 that HCRE made and that you're now testifying</p> <p>19 that Mr. Caruso agreed that it's just going to be</p> <p>20 -- it's just -- it's just going to lead to a</p> <p>21 dispute; right? It's kind of irrelevant to this</p> <p>22 isn't it?</p> <p>23 A. No.</p> <p>24 Q. What does a bankruptcy have to do</p> <p>25 with this?</p>	<p>Page 181</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. It's not a normal Chapter 11. It was</p> <p>3 turned into a liquidation. It became very</p> <p>4 contentious. I don't need to tell you this. We</p> <p>5 decided that we weren't going to waste any more</p> <p>6 time effort, money fighting this, that this --</p> <p>7 this could just be put off.</p> <p>8 Q. But you were still pursuing your</p> <p>9 Proof of Claim; right?</p> <p>10 A. I think -- I think you guys were</p> <p>11 pursuing removing Wick Phillips as our counsel or</p> <p>12 disqualifying them around this time.</p> <p>13 Q. Okay. So let's talk about that for a</p> <p>14 minute. You testified multiple times today that</p> <p>15 Wick Phillips was jointly representing Highland</p> <p>16 and HCRE; correct?</p> <p>17 A. I think I've said that -- no, that's</p> <p>18 not correct.</p> <p>19 Q. I think it is, actually.</p> <p>20 A. All the -- all -- all the law firms</p> <p>21 were representing everyone.</p> <p>22 Q. Okay.</p> <p>23 A.</p> <p>24 Q. I appreciate that. I appreciate the</p> <p>25 clarification. I'm just focusing on</p>

<p style="text-align: right;">Page 182</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Wick Phillips right now. Because notwithstanding</p> <p>3 the fact that Wick Phillips and the other law</p> <p>4 firms were representing both HCRE and HCMLP in</p> <p>5 connection with the drafting of the document,</p> <p>6 HCRE decided to retain Wick Phillips for purposes</p> <p>7 of pursuing its Proof of Claim against Highland;</p> <p>8 correct?</p> <p>9 A. They were our -- yeah, they were our</p> <p>10 primary counsel on the real estate side for a</p> <p>11 while, yeah --</p> <p>12 Q. And notwithstanding --</p> <p>13 A. -- for a few years.</p> <p>14 Q. Notwithstanding the fact that HCRE</p> <p>15 knew that Wick Phillips jointly represented</p> <p>16 Highland and HCRE, it opposed Highland's motion</p> <p>17 to disqualify Wick Phillips; correct?</p> <p>18 A. Yeah.</p> <p>19 Q. On what basis did HCRE have to oppose</p> <p>20 a motion to disqualify a law firm that</p> <p>21 represented both parties to the dispute?</p> <p>22 A. I don't know if you'll -- we can ask</p> <p>23 Mr. Sauter or -- but --</p> <p>24 Q. Fair enough. I don't want to ask</p> <p>25 Mr. Sauter. I'm going to ask you.</p>	<p style="text-align: right;">Page 183</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Do you know why --</p> <p>3 A. No.</p> <p>4 Q. -- HCRE opposed Highland's</p> <p>5 disqualification motion?</p> <p>6 A. No.</p> <p>7 Q. As a lawyer, can you think of any</p> <p>8 basis on which Wick Phillips could properly</p> <p>9 represent HCRE against its former client on the</p> <p>10 same subject matter?</p> <p>11 A. Not a matter of question given the --</p> <p>12 given, I think, your firm's rep --</p> <p>13 representation.</p> <p>14 Q. We've only had one client, sir. The</p> <p>15 ownership -- or the management may have changed,</p> <p>16 but we've only had one client. So let's go back</p> <p>17 to my question.</p> <p>18 A. Sure.</p> <p>19 Q. As a lawyer, can you think of any</p> <p>20 basis on which Wick Phillips could properly</p> <p>21 represent HCRE on a matter adverse to its former</p> <p>22 client, Highland, on the same subject matter?</p> <p>23 A. I don't know. I think -- I don't</p> <p>24 know. I would assume we asked for a waiver and</p> <p>25 you guys denied it.</p>
<p style="text-align: right;">Page 184</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. Do you have any basis for -- for</p> <p>3 saying that, or you just -- is that truly an</p> <p>4 assumption?</p> <p>5 A. It's truly an assumption.</p> <p>6 Q. Did you ever suggest that maybe HCRE</p> <p>7 should seek a waiver?</p> <p>8 A. Sure.</p> <p>9 Q. Do you know if it was ever done?</p> <p>10 A. I don't. I'd love to find out,</p> <p>11 though.</p> <p>12 Q. Who made the decision to oppose</p> <p>13 Highland's motion to disqualify Wick Phillips?</p> <p>14 A. I -- I don't know.</p> <p>15 Q. Did you ever ask anybody, we're --</p> <p>16 we're going through all of this litigation, why</p> <p>17 are we doing this? Who made the decision to do</p> <p>18 this?</p> <p>19 A. I -- I don't know.</p> <p>20 Q. You -- you never asked anybody?</p> <p>21 A. I -- no, I didn't think it was a -- I</p> <p>22 assumed it was for the same reason why the</p> <p>23 bankruptcy was as contentious as it was, every</p> <p>24 issue was litigated intent -- intensely.</p> <p>25 Q. But you personally knew that</p>	<p style="text-align: right;">Page 185</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Wick Phillips represented both HCRE and Highland</p> <p>3 jointly in connection with the negotiation or</p> <p>4 drafting of the Original LLC Agreement, the</p> <p>5 KeyBank loan, and the Amended and Restated LLC</p> <p>6 Agreement; correct?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay. And despite that knowledge,</p> <p>9 you didn't take any steps to try to have HCRE</p> <p>10 stand down and retain a lawyer who was</p> <p>11 independent of both parties; correct?</p> <p>12 A. That's correct. I don't believe we</p> <p>13 fought it as intently as -- as you guys did, but</p> <p>14 that's okay.</p> <p>15 Q. Well, y'all hired an expert, didn't</p> <p>16 you?</p> <p>17 A. I mean -- I -- I think we were --</p> <p>18 yeah, I mean, we -- I guess.</p> <p>19 Q. You fought it. I mean, is there</p> <p>20 anything you could have done to fight that motion</p> <p>21 that you didn't do?</p> <p>22 A. Was there any -- sorry, can you</p> <p>23 repeat the question?</p> <p>24 Q. You took fact discovery; right? HCRE</p> <p>25 took fact discovery to oppose the motion;</p>

<p>Page 186</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 correct?</p> <p>3 A. I don't -- I don't think we intently</p> <p>4 fought it as hard as you guys did.</p> <p>5 Q. But you opposed the motion; correct?</p> <p>6 A. Right. Okay?</p> <p>7 Q. I don't know about your lawyers, I</p> <p>8 fight to win.</p> <p>9 A. I can tell.</p> <p>10 Q. You see towards the end of</p> <p>11 Mr. McDermett's email, it says, "DC Sauter and</p> <p>12 the team is working towards a solution"?</p> <p>13 A. Yep.</p> <p>14 Q. Did DC Sauter and your team ever come</p> <p>15 up with a solution?</p> <p>16 A. No.</p> <p>17 Q. Well, Mr. McDermett authorized</p> <p>18 BH Equities to make distributions -- right? -- as</p> <p>19 set forth in this email?</p> <p>20 A. I think you're confusing the</p> <p>21 sentences.</p> <p>22 Q. Well, it says, "Please proceed to</p> <p>23 distribute \$5.3 million to BH and \$14 million to</p> <p>24 HCR NexVest."</p> <p>25 Have I read that generally correctly?</p>	<p>Page 187</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. I think my read is different.</p> <p>3 Q. What's your read?</p> <p>4 A. DC and team are working on a</p> <p>5 solution, and I took that to mean with respect to</p> <p>6 the -- the parenthetical return of equity and</p> <p>7 profits.</p> <p>8 Q. Oh, okay. I apologize. Maybe it was</p> <p>9 my fault. I was definitely staying within the</p> <p>10 email, but just moving on to the -- the sentence</p> <p>11 at the end.</p> <p>12 HCRE authorized BH Equities to make</p> <p>13 the distributions that are reflected in the last</p> <p>14 sentence; correct?</p> <p>15 A. Right, to extinguish the -- the debt.</p> <p>16 Q. Okay. And looking at this and seeing</p> <p>17 that money was going to pay NexVest, does that</p> <p>18 refresh your recollection that the amount</p> <p>19 allocated -- \$250 million that was allocated to</p> <p>20 HCRE from the KeyBank loan had been paid back in</p> <p>21 full by this time?</p> <p>22 A. Yeah, I don't -- I don't know if this</p> <p>23 was the last and final distribution, but I -- I</p> <p>24 think it has been paid back.</p> <p>25 Q. Would any distribution have been made</p>
<p>Page 188</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 to NexVest before KeyBank was paid in full?</p> <p>3 A. No.</p> <p>4 Q. So is it fair to say that since HCRE</p> <p>5 is authorizing a distribution to NexVest in</p> <p>6 November 2020, that KeyBank was paid in full</p> <p>7 prior to that time?</p> <p>8 A. Probably fair.</p> <p>9 Q. Okay. And do you recall if this is</p> <p>10 extinguishing the last of HCRE's debt to NexVest?</p> <p>11 A. I don't -- I don't know.</p> <p>12 Q. Okay. Let's go down to --</p> <p>13 A. I don't know if this is -- I don't</p> <p>14 know if this was the last of it or not.</p> <p>15 Q. Okay. Let's go to the mail above it.</p> <p>16 Okay. So do you see BH Equities wants its</p> <p>17 remaining 6.2 of capital returned; right? Is it</p> <p>18 your understanding that as of this time, all of</p> <p>19 BH Equities' debt financing had the been repaid</p> <p>20 in full and that what it wanted now, as of</p> <p>21 November 2020, is the portion of its capital</p> <p>22 contribution that was true equity?</p> <p>23 A. That's what it says.</p> <p>24 Q. Okay. And that -- that's exactly</p> <p>25 what you recall happening at this time; right?</p>	<p>Page 189</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. Yeah.</p> <p>3 Q. And under the waterfall, as you</p> <p>4 understood it, because that was a provision that</p> <p>5 you personally focused on, BH Equities would</p> <p>6 never have any right to ask for the return of its</p> <p>7 true equity contribution before all of the debt</p> <p>8 financed equity was paid in full; correct?</p> <p>9 A. That was the business deal, yeah.</p> <p>10 Q. Okay. So does this refresh your</p> <p>11 recollection that under the terms of the business</p> <p>12 deal, as you understood it, that as of</p> <p>13 November 2020, all of the debt financed capital</p> <p>14 contributions had been paid in full and that BH</p> <p>15 Equities was now looking for a path forward to</p> <p>16 collect on its equity financed portion?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Let's go to the next exhibit,</p> <p>19 Exhibit 11, please.</p> <p>20 (Exhibit 11 was marked.)</p> <p>21 Q. Okay. So here's a follow-up. It's</p> <p>22 about seven months later. We're now in June of</p> <p>23 2021. Do you recall that BH Equities again</p> <p>24 requested the return of its equity capital?</p> <p>25 A. I do.</p>

<p style="text-align: right;">Page 190</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. Highland was still in bankruptcy;</p> <p>3 right?</p> <p>4 A. Yeah, I think we still are -- or</p> <p>5 you -- still is now.</p> <p>6 Q. Right. And so they're asking for the</p> <p>7 return of their capital, and they're noting that</p> <p>8 SE Multifamily has about \$8 million in the bank.</p> <p>9 And they're basically saying there's more -- more</p> <p>10 than enough cash to -- to make us whole on our</p> <p>11 capital contribution, can we do that -- right? --</p> <p>12 that's what's happening here?</p> <p>13 A. Yep.</p> <p>14 Q. So if we can scroll up to the next</p> <p>15 email, you're added to the email string.</p> <p>16 Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. Just four minutes later. So you're</p> <p>19 aware of the request that's being made and the</p> <p>20 justification for the request contemporaneously;</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And let's go to the last mail</p> <p>24 above. And Mr. McDermott writes -- and he's</p> <p>25 copied you -- that upon review and discussion</p>	<p style="text-align: right;">Page 191</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 with Mr. McGraner, the return of all of the</p> <p>3 equity portion of the capital contribution has</p> <p>4 been approved; correct?</p> <p>5 A. Correct.</p> <p>6 Q. And so in June of 2021, you made the</p> <p>7 decision that BH Equities could collect on the</p> <p>8 remainder of its capital contribution, even the</p> <p>9 portion that was equity financed that was</p> <p>10 financed out of its own pocket; correct?</p> <p>11 A. Correct.</p> <p>12 Q. Is there any reason why you didn't</p> <p>13 treat Highland the same way that you treated</p> <p>14 BH Equities in June of 2021?</p> <p>15 A. Because they got 23 times its money</p> <p>16 30 days later after we closed.</p> <p>17 Q. Any other reason?</p> <p>18 A. Same reason about getting in</p> <p>19 contentious, unnecessary, you know, fight.</p> <p>20 Q. So the Highland bankruptcy didn't</p> <p>21 prevent you in June of 2021 from authorizing</p> <p>22 SE Multifamily to make a return of equity capital</p> <p>23 to BH Equities; correct?</p> <p>24 A. Correct.</p> <p>25 Q. And the reason that you decided that</p>
<p style="text-align: right;">Page 192</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Highland would be treated differently is because</p> <p>3 Highland had received that \$1 million at the</p> <p>4 KeyBank closing in September 2018. Do I have</p> <p>5 that right?</p> <p>6 A. In addition to the fact that we</p> <p>7 didn't think 46 percent interest was the intent.</p> <p>8 Q. This -- I'm just asking about the</p> <p>9 \$49,000. I'm just asking about the return of</p> <p>10 capital. Okay? So maybe my questioning wasn't</p> <p>11 clear.</p> <p>12 A. Sure, I'd say that's right.</p> <p>13 Q. As -- as of June of 2021, both HCRE</p> <p>14 and BH Equities had all of the capital returned</p> <p>15 to them as set forth on Schedule A; correct?</p> <p>16 A. Correct. As did Highland.</p> <p>17 Q. Highland got back -- I'm sorry.</p> <p>18 Is it your testimony that Highland</p> <p>19 got back its \$49,000 in June of 2021?</p> <p>20 A. I -- I think it got -- from my</p> <p>21 perspective, I think it got its capital back with</p> <p>22 the 1.14 million.</p> <p>23 Q. Is that reflected in SE Multifamily's</p> <p>24 books and records anywhere that part of that</p> <p>25 million dollars was actually a return of capital?</p>	<p style="text-align: right;">Page 193</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. I don't -- I don't know. I'll have</p> <p>3 to look.</p> <p>4 Q. You're just making that up, aren't</p> <p>5 you?</p> <p>6 A. I'm -- apologize, I don't make stuff</p> <p>7 up.</p> <p>8 Q. Well, you've mentioned that million</p> <p>9 dollars several times today as a reason why it's</p> <p>10 taking 94 percent of profits and losses, but not</p> <p>11 once until now have you ever suggested that a</p> <p>12 portion of that was actually a return of capital.</p> <p>13 Was that just an oversight on your</p> <p>14 part?</p> <p>15 A. What, paying Highland 23 times their</p> <p>16 money?</p> <p>17 Q. Are you going to listen to my</p> <p>18 question? Was it an oversight that you failed to</p> <p>19 tell me that a portion of the million dollars was</p> <p>20 a return of capital?</p> <p>21 A. I don't think you ever asked me that</p> <p>22 question.</p> <p>23 Q. So -- so Highland agreed -- so -- so</p> <p>24 about 5 percent of that million dollars was a</p> <p>25 return of capital. Do I have that right?</p>

<p style="text-align: right;">Page 194</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. I think it's a little less than that.</p> <p>3 But I don't -- I don't know how Highland</p> <p>4 characterized that cash that they got on their --</p> <p>5 on their balance sheet.</p> <p>6 Q. Is it -- is it -- is it Highland's</p> <p>7 responsibility to do that? Or is it HCRE as the</p> <p>8 manager of SE Multifamily to do that?</p> <p>9 A. What, to -- to say what -- what the</p> <p>10 cash is characterized on Highland's balance</p> <p>11 sheet?</p> <p>12 Q. No, distributions that are being made</p> <p>13 from SE Multifamily. And, in fact, the money</p> <p>14 that was paid to Highland in September 2018, that</p> <p>15 didn't come from SE Multifamily, did it?</p> <p>16 A. I mean, of course it did. How did it</p> <p>17 -- how did it not?</p> <p>18 Q. So -- so if we looked at</p> <p>19 SE Multifamily's books and records, we would show</p> <p>20 a million-dollar transfer from SE Multifamily to</p> <p>21 Highland in September 2018.</p> <p>22 A. I don't know.</p> <p>23 Q. What's your basis for saying -- what</p> <p>24 is your basis --</p> <p>25 A. Again, this is one point --</p>	<p style="text-align: right;">Page 195</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. What is your basis for saying that</p> <p>3 the million dollars paid from Highland came from</p> <p>4 SE Multifamily in September 2018 as opposed to</p> <p>5 KeyBank?</p> <p>6 A. Well, because HCRE as the manager and</p> <p>7 the lead borrower directed those funds to be paid</p> <p>8 to one of the partners in the partnership.</p> <p>9 Q. Did HCRE in its capacity as the</p> <p>10 manager direct that capital to extinguish -- to</p> <p>11 extinguish Highland's capital contribution?</p> <p>12 A. (No verbal response.)</p> <p>13 Q. Did -- did HCRE do that?</p> <p>14 A. Not that I know of.</p> <p>15 Q. They could not have done that --</p> <p>16 isn't that right? -- under the terms of the</p> <p>17 KeyBank loan?</p> <p>18 A. But KeyBank is the one that sent us</p> <p>19 the money.</p> <p>20 Q. Sir --</p> <p>21 A. So they -- they were at least</p> <p>22 implicitly agreeing that we could distribute it</p> <p>23 how we saw fit, if not explicitly.</p> <p>24 Q. Sir, as the person who -- who was</p> <p>25 involved in the negotiation of the KeyBank loan,</p>
<p style="text-align: right;">Page 196</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 did the borrowers have the right to return equity</p> <p>3 capital before KeyBank loan was paid back in</p> <p>4 full? Could they have even done that?</p> <p>5 A. I don't -- I don't understand your</p> <p>6 question. They sent us the money back.</p> <p>7 Q. Correct. And why did they do that?</p> <p>8 Because your pain and suffering; right?</p> <p>9 A. Yeah, I lived it. It wasn't fun.</p> <p>10 Q. That's right. They didn't say, Here,</p> <p>11 take this money and pay down the capital</p> <p>12 contribution that Highland made to</p> <p>13 SE Multifamily, did they?</p> <p>14 A. No.</p> <p>15 Q. And HCRE never said, Hey, Highland,</p> <p>16 \$49,000 of that money, you've just gotten your</p> <p>17 capital paid back -- right? -- you never said</p> <p>18 that?</p> <p>19 A. I don't know if it was said or not.</p> <p>20 I think they were happy to have it.</p> <p>21 Q. That's not what I asked you.</p> <p>22 MR. MORRIS: I move to strike.</p> <p>23 Q. Do you have any personal knowledge</p> <p>24 that HCRE made the determination that \$49,000 of</p> <p>25 the money paid by KeyBank to Highland in</p>	<p style="text-align: right;">Page 197</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 September '18 was used to extinguish Highland's</p> <p>3 capital contribution in SE Multifamily?</p> <p>4 A. I -- I -- I think you're mixing words</p> <p>5 but --</p> <p>6 Q. Is my question unclear to you?</p> <p>7 A. No, I don't.</p> <p>8 Q. Is my question unclear to you?</p> <p>9 A. Yeah.</p> <p>10 Q. Okay. Did HCRE ever direct that</p> <p>11 \$49,000 of the payment made by KeyBank would be</p> <p>12 characterized as a return of capital to Highland</p> <p>13 under the SE Multifamily agreement?</p> <p>14 A. Not specifically, no.</p> <p>15 Q. Not generally; isn't that right?</p> <p>16 A. Not specifically.</p> <p>17 Q. You've never seen a document in your</p> <p>18 life that reflects the treatment of \$49,000 of</p> <p>19 that September '18 payment as the return of</p> <p>20 capital; correct?</p> <p>21 A. It was a very, very complex,</p> <p>22 fast-moving transaction at the time of it -- of</p> <p>23 closing. So...</p> <p>24 Q. Sir, can you identify a document in</p> <p>25 the world that exists that reflects the return of</p>

<p>Page 198</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Highland's capital in September 2018?</p> <p>3 A. No. But I'll look for one.</p> <p>4 Q. Okay.</p> <p>5 A. Because that email was probably sent</p> <p>6 along with the capital back to -- back to</p> <p>7 Highland. I don't know what was stated.</p> <p>8 Q. So then why six months later did you</p> <p>9 say that Schedule A was true and accurate? Why</p> <p>10 was Highland still getting credit for a \$49,000</p> <p>11 capital contribution that had already been</p> <p>12 repaid?</p> <p>13 A. We didn't view it as that. I mean,</p> <p>14 we weren't concerned about it at the time. It's</p> <p>15 a very different circumstance than we're sitting</p> <p>16 in today.</p> <p>17 Q. So at the time you didn't think that</p> <p>18 the \$49,000 had been returned to cap -- to</p> <p>19 Highland; correct? You only think that now?</p> <p>20 A. I think it got 23 times its original</p> <p>21 investment. That's what I think.</p> <p>22 Q. Sir, at the time HCRE signed the</p> <p>23 amended and restated agreement, did it believe</p> <p>24 that Highland had already received its capital as</p> <p>25 a result of the payment made in September 2018?</p>	<p>Page 199</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Yes or no.</p> <p>3 A. I think the fact that it received 23</p> <p>4 times its capital back, that that would include a</p> <p>5 return of capital.</p> <p>6 Q. Did you think that in March of 2019?</p> <p>7 A. I don't know.</p> <p>8 Q. You didn't -- right? -- or you never</p> <p>9 would have let Mr. Dondero sign an agreement that</p> <p>10 still had a \$49,000 capital contribution from</p> <p>11 Highland -- isn't that right? -- you wouldn't</p> <p>12 have done that?</p> <p>13 A. Yeah, I would have, because it was a</p> <p>14 living document.</p> <p>15 Q. And --</p> <p>16 A. We all were working toward changed</p> <p>17 circumstances and the transitional-like</p> <p>18 portfolio. That's -- that was the purpose.</p> <p>19 Q. How many lives does it have? Because</p> <p>20 it put in \$49,000, it got it back, and you and</p> <p>21 Mr. Dondero and everybody working on behalf of</p> <p>22 Highland and HCRE is comfortable saying six</p> <p>23 months later you should still get credit for the</p> <p>24 \$49,000 that you got repaid back, is that your</p> <p>25 testimony?</p>
<p>Page 200</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. It's a \$1.4 billion transaction,</p> <p>3 \$49,000 at the time with friendly affiliates, it</p> <p>4 didn't really concern us.</p> <p>5 Q. Okay. I'll take it. So -- so the</p> <p>6 reason that you didn't have Highland receive its</p> <p>7 \$49,000 at the same time BH Equities received its</p> <p>8 equity contribution in June of 2021 is because</p> <p>9 you decided at that time that Highland had</p> <p>10 already received enough money -- right? --</p> <p>11 through -- through that September 2018</p> <p>12 distribution?</p> <p>13 A. Yeah, I think that's -- that's</p> <p>14 partially true. And the other is that we didn't</p> <p>15 agree with the allocation.</p> <p>16 Q. Did you discuss this issue with</p> <p>17 anybody in June of 2021 about why Highland wasn't</p> <p>18 going to get its \$49,000 capital contribution</p> <p>19 back?</p> <p>20 A. We -- I just said the prior statement</p> <p>21 that we viewed that as partially taking care of</p> <p>22 their capital contribution. And the other reason</p> <p>23 is because we didn't want to fight the fight that</p> <p>24 we're having now.</p> <p>25 Q. So you thought by not paying Highland</p>	<p>Page 201</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 and treating it like the other members of HCRE,</p> <p>3 that would help avoid a fight?</p> <p>4 A. I don't understand that, what you're</p> <p>5 insinuating.</p> <p>6 Q. Okay. Well, I'm going to ask my --</p> <p>7 my earlier question. Did you discuss with</p> <p>8 anybody in June of 2021 about whether Highland</p> <p>9 should receive a return of its \$49,000?</p> <p>10 A. No.</p> <p>11 Q. Okay. Did someone make a decision</p> <p>12 that \$49,000 of the payment made in December --</p> <p>13 in September 2018 would be treated as a return of</p> <p>14 capital? Did somebody make that decision?</p> <p>15 A. No one is going to make a decision on</p> <p>16 the character of return of capital or</p> <p>17 distributions to Highland or HCRE as long as we</p> <p>18 are disputing the percentages and the intent of</p> <p>19 the document. That's the point.</p> <p>20 Q. Are you aware that HCRE sent Highland</p> <p>21 a check for \$49,000 in June 2022?</p> <p>22 A. I am.</p> <p>23 Q. Did you authorize that payment?</p> <p>24 A. No.</p> <p>25 Q. Who authorized the payment to</p>

<p style="text-align: right;">Page 202</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Highland in June of 2022 of \$49,000?</p> <p>3 A. I don't know.</p> <p>4 Q. Did you ever discuss it with anybody</p> <p>5 in the world?</p> <p>6 A. No.</p> <p>7 Q. How did you learn it happened?</p> <p>8 A. Through this process.</p> <p>9 Q. What part of this process informed</p> <p>10 you that -- of that because that hasn't been in</p> <p>11 any papers, I don't think -- where did you learn</p> <p>12 that HCRE sent Highland \$49,000 in June of 2022?</p> <p>13 A. Maybe Jim's testimony or someone's</p> <p>14 testimony. I don't specifically recall.</p> <p>15 Q. Did you ever ask anybody why that</p> <p>16 happened since Highland had already received so</p> <p>17 much money?</p> <p>18 A. No.</p> <p>19 Q. You're not at all curious as to why</p> <p>20 that payment was made in June of 2022, you didn't</p> <p>21 ask anybody any questions at any time?</p> <p>22 A. None of this makes any sense to me</p> <p>23 anyway, so, no.</p> <p>24 Q. It does or it doesn't make sense?</p> <p>25 A. It doesn't.</p>	<p style="text-align: right;">Page 203</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. So as a 30 percent owner of HCRE,</p> <p>3 which has at least 40 some-odd percent</p> <p>4 interest --</p> <p>5 MR. MORRIS: Did you leave? Who's</p> <p>6 here?</p> <p>7 THE WITNESS: I'm here. I'm here.</p> <p>8 MR. MORRIS: Oh, I lost your face</p> <p>9 for a second.</p> <p>10 Q. So it doesn't make sense to you that</p> <p>11 HCRE made this payment in June 2022?</p> <p>12 A. It doesn't make sense to me.</p> <p>13 Q. But -- but -- but despite the fact</p> <p>14 that it doesn't make sense, you've never taken</p> <p>15 the time to ask anybody what that was about; is</p> <p>16 that fair?</p> <p>17 A. That's fair. Say I'm petite.</p> <p>18 Q. I share that. Were you involved in</p> <p>19 the process of the preparation of</p> <p>20 SE Multifamily's tax returns?</p> <p>21 A. No.</p> <p>22 Q. Who was responsible for acting on</p> <p>23 behalf of HCRE in connection with the preparation</p> <p>24 of SE Multifamily's tax returns?</p> <p>25 A. For which year?</p>
<p style="text-align: right;">Page 204</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. At any time. So let's start from the</p> <p>3 beginning and if -- if -- if the names of the --</p> <p>4 if the identities of the people involved changed,</p> <p>5 just let me know. So -- so, Mr. McGraner, I</p> <p>6 don't mean to give you a hard time. Let me ask</p> <p>7 you a cleaner question.</p> <p>8 Can you -- can you tell me who since</p> <p>9 HCRE was formed -- no. Withdrawn.</p> <p>10 Can you tell me who, since</p> <p>11 SE Multifamily was formed, was responsible for</p> <p>12 preparing SE Multifamily's tax returns?</p> <p>13 A. 2018 would have been Highland's tax</p> <p>14 team. I guess 2019 is a little wishy washy in my</p> <p>15 -- in my view because of the petition filing, but</p> <p>16 probably the same answer. We lost shared</p> <p>17 services in 2020. SkyView is formed, so perhaps</p> <p>18 SkyView or Highland in 2020. And I think now</p> <p>19 SkyView. But largely they're probably the same</p> <p>20 general individuals.</p> <p>21 Q. And that would include Mr. Patrick.</p> <p>22 Do I have that right?</p> <p>23 A. (No verbal response.)</p> <p>24 Q. And who in addition to Mr. Patrick</p> <p>25 would have been involved in the preparation of</p>	<p style="text-align: right;">Page 205</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 SE Multifamily's tax returns since SE Multifamily</p> <p>3 was first created?</p> <p>4 A. I think Swadley, he's the leader of</p> <p>5 the tax team, and then Broaddus, as long as he</p> <p>6 was here. I don't remember when he left.</p> <p>7 Q. Did Mr. Broaddus leave in 2022 or</p> <p>8 before 2022?</p> <p>9 A. I thought it was -- thought it was</p> <p>10 right around COVID, 2020 maybe.</p> <p>11 Q. Okay. Okay. Have you ever spoken</p> <p>12 with anyone at Barker Viggato concerning</p> <p>13 SE Multifamily's tax returns?</p> <p>14 A. No.</p> <p>15 Q. And when I use the phrase "tax</p> <p>16 returns," I'm talking about not only</p> <p>17 SE Multifamily's tax returns but the K-1s that</p> <p>18 were prepared for SE Multifamily's members. Do</p> <p>19 you understand?</p> <p>20 A. I do.</p> <p>21 Q. Okay. So you've never communicated</p> <p>22 with anybody -- with that definition of tax</p> <p>23 returns, you've never spoken with anybody at</p> <p>24 Barker Viggato concerning SE Multifamily's tax</p> <p>25 returns; is that right?</p>

<p style="text-align: right;">Page 206</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. Right.</p> <p>3 Q. Do you know if Mr. Dondero has ever</p> <p>4 spoken with anybody at Barker Viggato concerning</p> <p>5 SE Multifamily's tax returns as I've defined</p> <p>6 that?</p> <p>7 A. I don't know.</p> <p>8 Q. Did you ever discuss with him any</p> <p>9 communications that he ever had with</p> <p>10 SE Multifamily with Barker Viggato?</p> <p>11 A. No.</p> <p>12 Q. Did you ever make any decisions</p> <p>13 related to the preparation of SE Multifamily's</p> <p>14 tax returns as I've defined it?</p> <p>15 A. In -- in one instance, yeah.</p> <p>16 Q. What decision did you make?</p> <p>17 A. For one tax return, I think we wanted</p> <p>18 to highlight the ambiguity of the -- the</p> <p>19 percentage allocation. So I think that was noted</p> <p>20 on -- on the return.</p> <p>21 Q. And that happened in the fall of 2021</p> <p>22 with respect to the 2020 returns; correct?</p> <p>23 A. I think that's right.</p> <p>24 Q. Okay. So to the best of your</p> <p>25 knowledge, that issue was not raised with</p>	<p style="text-align: right;">Page 207</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Barker Viggato until the fall of 2021; correct?</p> <p>3 A. I think that was right.</p> <p>4 Q. Are there any other decisions that</p> <p>5 you recall making with respect to any aspect of</p> <p>6 SE Multifamily's tax returns?</p> <p>7 A. No.</p> <p>8 Q. Are you aware of any mistake or any</p> <p>9 error that was made with respect to any of</p> <p>10 SE Multifamily's tax returns?</p> <p>11 A. No.</p> <p>12 Q. Are you aware of any amendment that's</p> <p>13 ever been made to any of SE Multifamily's tax</p> <p>14 returns?</p> <p>15 A. No.</p> <p>16 Q. Are you aware of any discussion</p> <p>17 that's ongoing now as to whether or not</p> <p>18 SE Multifamily should amend any of its tax</p> <p>19 returns?</p> <p>20 A. No.</p> <p>21 Q. Has SE Multifamily completed the tax</p> <p>22 returns for 2021?</p> <p>23 A. I think so.</p> <p>24 Q. They would have been due</p> <p>25 September 15th; right?</p>
<p style="text-align: right;">Page 208</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. Yeah, I think so.</p> <p>3 Q. Do you know if Barker Viggato acted</p> <p>4 as the tax preparer for the SE Multifamily tax</p> <p>5 returns for 2021?</p> <p>6 A. I think so.</p> <p>7 Q. Was there ever any consideration</p> <p>8 given to replacing Barker Viggato as the tax</p> <p>9 preparer for SE Multifamily's tax returns?</p> <p>10 A. Not as far as I'm aware.</p> <p>11 Q. Are you aware of any concern by</p> <p>12 Barker Viggato -- withdrawn.</p> <p>13 Did -- do you know whether Barker</p> <p>14 Viggato ever expressed any reluctance in</p> <p>15 continuing on as SE Multifamily's tax preparer?</p> <p>16 A. No.</p> <p>17 Q. Did you ever review any draft tax</p> <p>18 return for SE Multifamily?</p> <p>19 A. Just the one where I directed the --</p> <p>20 the note.</p> <p>21 Q. What prompted you to do that at that</p> <p>22 time?</p> <p>23 A. I think -- I think we were trying to</p> <p>24 resolve this to see what -- how this would shake</p> <p>25 out. When I say "this," it's the dispute.</p>	<p style="text-align: right;">Page 209</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Q. I apologize if I asked this. It</p> <p>3 would have been just a moment ago, but I'm a</p> <p>4 little tired myself.</p> <p>5 Did you ever see a draft of</p> <p>6 SE Multifamily's tax returns before it was fin-</p> <p>7 -- before they were finalized? Did they run them</p> <p>8 by you? Did you kind of look at them?</p> <p>9 A. Just the -- just per the</p> <p>10 conversations with the tax team.</p> <p>11 Q. Did you ever review --</p> <p>12 A. They --</p> <p>13 Q. I'm sorry. Go ahead.</p> <p>14 A. We would -- we would have brief</p> <p>15 conversations about it, and then that one</p> <p>16 instance where I thought we should note that</p> <p>17 there was a dispute.</p> <p>18 Q. Did -- are you familiar -- withdrawn.</p> <p>19 Did you ever see SE Multifamily's</p> <p>20 final tax returns after they were filed?</p> <p>21 A. I saw the HCRE K-1s, the ones that</p> <p>22 had passed through to partnerships, but not the</p> <p>23 -- not SE Multifamily's.</p> <p>24 Q. Did you see any K-1s other than those</p> <p>25 for HCRE?</p>

<p style="text-align: right;">Page 210</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. No.</p> <p>3 Q. Did anybody discuss with you at any</p> <p>4 time the allocation of profits and losses in</p> <p>5 connection with the preparation of any of the</p> <p>6 SE Multifamily tax returns?</p> <p>7 A. Just the -- just the first year.</p> <p>8 Q. Do you know how decisions were made</p> <p>9 concerning the allocation of profits and losses</p> <p>10 on SE Multifamily's tax returns?</p> <p>11 A. Generally, no.</p> <p>12 Q. Do you have any understanding at all</p> <p>13 as to who made the decision as to how to allocate</p> <p>14 SE Multifamily's profits and losses among its</p> <p>15 members?</p> <p>16 A. Did you ask for my understanding?</p> <p>17 Q. No. I'm asking if you have any idea</p> <p>18 as to who made those decisions as -- as to how to</p> <p>19 allocate SE Multifamily's P&L across the members?</p> <p>20 A. I -- I don't know what went into it.</p> <p>21 Q. Did you ever give the tax group any</p> <p>22 instructions of any kind as to how to prepare the</p> <p>23 SE Multifamily's tax returns?</p> <p>24 A. No.</p> <p>25 Q. Did -- do you know if Mr. Dondero</p>	<p style="text-align: right;">Page 211</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 gave any instructions of any kind to the tax</p> <p>3 group as to how to prepare SE Multifamily's tax</p> <p>4 returns?</p> <p>5 A. No.</p> <p>6 Q. From your perspective, did the tax</p> <p>7 group have the authority to make the decisions as</p> <p>8 to the content of SE Multifamily's tax returns?</p> <p>9 A. Yeah, I think -- I think they know</p> <p>10 what their job is.</p> <p>11 Q. And neither you nor Mr. Dondero, to</p> <p>12 the best of your knowledge, did anything to</p> <p>13 ascertain whether or not they were doing their</p> <p>14 job correctly; is that fair?</p> <p>15 A. Fair.</p> <p>16 Q. You just relied on them; is that</p> <p>17 right?</p> <p>18 A. Yes, that's right.</p> <p>19 Q. Even though HCRE is ultimately the</p> <p>20 manager of SE Multifamily, the job of causing</p> <p>21 SE Multifamily's tax returns to be prepared and</p> <p>22 filed was delegated to the tax group whether it</p> <p>23 was at Highland or SkyView; correct?</p> <p>24 A. Yeah, they're seasoned professionals,</p> <p>25 we relied on -- on their experience and the</p>
<p style="text-align: right;">Page 212</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 professionals' experience.</p> <p>3 Q. Okay.</p> <p>4 MR. MORRIS: All right. It's 2:38.</p> <p>5 Give me ten minutes. I don't have a lot</p> <p>6 left. So let me just take a -- a minute to</p> <p>7 look at my notes. And let me see where we</p> <p>8 are. If we can come back just to -- not to</p> <p>9 be so arbitrary, let's call it 2:50 your</p> <p>10 time.</p> <p>11 THE WITNESS: Okay.</p> <p>12 THE VIDEOGRAPHER: The time is</p> <p>13 2:40 p.m. and we are going off the record.</p> <p>14 (Break from 2:38 p.m. to 2:50 p.m.)</p> <p>15 THE VIDEOGRAPHER: The time is</p> <p>16 2:52 p.m. and we are back on the record.</p> <p>17 Q. (BY MR. MORRIS) Mr. McGraner, can</p> <p>18 you hear me okay?</p> <p>19 A. I can.</p> <p>20 Q. Okay. We're going to put up a</p> <p>21 document on the screen that was premarked as</p> <p>22 Exhibit 17, which is an email exchange.</p> <p>23 (Exhibit 17 was marked.)</p> <p>24 MR. MORRIS: If you just go towards</p> <p>25 the bottom, you'll see -- all right. Start</p>	<p style="text-align: right;">Page 213</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 there.</p> <p>3 Q. (BY MR. MORRIS) Do you see there is</p> <p>4 an email -- I guess you have to go to the top of</p> <p>5 the -- the bottom of the broader page -- right</p> <p>6 there -- from Mr. Broaddus to Herb -- Heriberto</p> <p>7 Rios, Mark Barker, Ross Kirshner on September</p> <p>8 13th.</p> <p>9 Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. And this is 2021. Is this around the</p> <p>12 time that you recall getting involved in that one</p> <p>13 issue relating to the SE Multifamily tax returns</p> <p>14 concerning allocations?</p> <p>15 A. I believe so, yeah.</p> <p>16 Q. And you see that Mr. Broaddus is</p> <p>17 asking whether the tax returns had been filed</p> <p>18 because he says, "We want to add a statement to</p> <p>19 the return and then file a superseded return on</p> <p>20 or before Wednesday.</p> <p>21 Do you see that?"</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And if we can scroll up,</p> <p>24 please. So then the response from Mr. Rios is</p> <p>25 that the return hasn't been filed.</p>

<p style="text-align: right;">Page 214</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And then he asks some other -- he</p> <p>5 asks some other questions. Can we go to the next</p> <p>6 email, the response? All right. So Mr. Kirshner</p> <p>7 says, "We haven't filed the return yet. We can</p> <p>8 update addresses."</p> <p>9 And he asks for the statement that</p> <p>10 was requested to be included; right?</p> <p>11 A. Yep.</p> <p>12 Q. And then go up a little bit.</p> <p>13 Mr. Rios says, "Paul will send it on when it's</p> <p>14 ready."</p> <p>15 Continue on to the next email.</p> <p>16 Mr. Kirshner responds in a way that's not</p> <p>17 substantive to my questions. And then keep</p> <p>18 going. Mr. Rios, "That sounds good." Keep</p> <p>19 going. Mr. Barker is still looking for the</p> <p>20 statement on September 14th. Keep going. And we</p> <p>21 have it. We finally have it.</p> <p>22 So Mr. Broaddus writes to</p> <p>23 Barker Viggato on September 14th and he includes</p> <p>24 a statement.</p> <p>25 Do you see that?</p>	<p style="text-align: right;">Page 215</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. I do.</p> <p>3 Q. And -- and did you approve of this</p> <p>4 statement before it was sent to Barker Viggato on</p> <p>5 September 14, 2021?</p> <p>6 A. I did.</p> <p>7 Q. And is this the only substantive</p> <p>8 issue you recall being involved with in</p> <p>9 connection with SE Multifamily's tax returns?</p> <p>10 A. It is.</p> <p>11 Q. And this statement -- do you know if</p> <p>12 this statement was adopted in any of</p> <p>13 SE Multifamily's tax returns?</p> <p>14 A. Do I -- do I know if it was in the</p> <p>15 tax return?</p> <p>16 Q. Yeah, do you know if this was</p> <p>17 actually adopted and put into SE Multifamily's</p> <p>18 tax returns?</p> <p>19 A. I believe so.</p> <p>20 Q. And was that done at your</p> <p>21 instruction?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And this document refers to</p> <p>24 the allocation of taxable income, that's the</p> <p>25 first sentence; right?</p>
<p style="text-align: right;">Page 216</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. Yep.</p> <p>3 Q. And -- and the second sentence refers</p> <p>4 to the capital contributions of NexPoint Real</p> <p>5 Estate Partners and Highland Capital Management;</p> <p>6 right?</p> <p>7 A. Right.</p> <p>8 Q. You don't tell -- you don't tell</p> <p>9 Barker Viggato at this time that you believe</p> <p>10 Highland has received all of its capital back, do</p> <p>11 you?</p> <p>12 A. No.</p> <p>13 Q. You never told -- nobody acting on</p> <p>14 behalf of HCRE has ever told Barker Viggato that</p> <p>15 Highland has ever received its capital back;</p> <p>16 right? To the best --</p> <p>17 A. Yeah, not that I'm aware of.</p> <p>18 Q. You never instructed anybody to</p> <p>19 inform SE Multifamily's tax preparers that</p> <p>20 Highland had received its capital back; right?</p> <p>21 A. No.</p> <p>22 Q. But the important point for you is</p> <p>23 the next sentence: "The economic ownership as</p> <p>24 reflected herein and in the company agreement is</p> <p>25 in dispute and subject to change."</p>	<p style="text-align: right;">Page 217</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Have I read that correctly?</p> <p>3 A. You have.</p> <p>4 Q. And the manager there in the next</p> <p>5 sentence is HCRE; correct?</p> <p>6 A. Correct.</p> <p>7 Q. And you reserve the right to amend</p> <p>8 the returns of the partnership for the year 2019</p> <p>9 and subsequent years upon a final determination,</p> <p>10 is that substantively correct?</p> <p>11 A. Yes.</p> <p>12 Q. Is this the first time, to the best</p> <p>13 of your knowledge, that HCRE has informed</p> <p>14 Barker Viggato that the owner -- the economic</p> <p>15 ownership was in dispute and is subject to</p> <p>16 change?</p> <p>17 A. I -- I don't know if Paul or Rick</p> <p>18 said anything, but otherwise this is the first</p> <p>19 time. They may have -- they may have said</p> <p>20 something earlier.</p> <p>21 Q. And HCRE had formed the belief prior</p> <p>22 to the petition date that the allocation was</p> <p>23 incorrect. Do I have that right?</p> <p>24 A. Yes.</p> <p>25 Q. And yet despite having that knowledge</p>

<p>Page 218</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 prior to the petition date, it wasn't until</p> <p>3 September 2021 that HCRE informed</p> <p>4 SE Multifamily's tax preparer of that belief;</p> <p>5 correct?</p> <p>6 A. That's right.</p> <p>7 Q. Okay. Did you have any discussion</p> <p>8 with Barker Viggato about this statement?</p> <p>9 A. I didn't personally.</p> <p>10 Q. Do you know if anybody acting on</p> <p>11 behalf of SE Multifamily or HCRE ever discussed</p> <p>12 this statement with anybody at Barker Viggato?</p> <p>13 A. Other than the email, I don't know.</p> <p>14 Q. So did anybody -- did you ever</p> <p>15 instruct anybody to explain to Barker Viggato the</p> <p>16 nature of the dispute?</p> <p>17 A. No. I just had the conversation with</p> <p>18 our internal tax team.</p> <p>19 Q. Right. And did you, during those</p> <p>20 conversations, instruct them to explain to</p> <p>21 Barker Viggato the nature of the dispute?</p> <p>22 A. I think I just said, I want -- I want</p> <p>23 to include this, can you do it? Oh, from -- I</p> <p>24 guess they ran with it from there on.</p> <p>25 Q. Do you know if anyone acting on</p>	<p>Page 219</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 behalf of SE Multifamily or HCRE ever explained</p> <p>3 to Barker Viggato the nature of the dispute?</p> <p>4 A. I -- I don't know.</p> <p>5 Q. Nobody ever told you that; right?</p> <p>6 A. Right.</p> <p>7 Q. And you never directed anybody to</p> <p>8 have that conversation; correct?</p> <p>9 A. That's right.</p> <p>10 Q. So to the best of your knowledge,</p> <p>11 Barker Viggato received this email, cut and</p> <p>12 pasted the statement, then that was that. Is</p> <p>13 that fair?</p> <p>14 A. Fair.</p> <p>15 Q. Has -- has the manager amended the</p> <p>16 tax returns of the partnership for the tax year</p> <p>17 2019 or any subsequent year?</p> <p>18 A. Not that I'm aware of.</p> <p>19 Q. Is the manager considering amending</p> <p>20 the tax returns of the partnership for the tax</p> <p>21 year 2019 or any subsequent year?</p> <p>22 A. Not to my knowledge.</p> <p>23 Q. Did you personally ever speak with</p> <p>24 anybody at BH Equities concerning HCRE's</p> <p>25 contention that the ownership as reflected in the</p>
<p>Page 220</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 company agreement was in dispute?</p> <p>3 A. I did.</p> <p>4 Q. When did you do that?</p> <p>5 A. Post petition filing, I think Joanna,</p> <p>6 who is president of BH is -- was aware.</p> <p>7 Q. Any idea when post petition you</p> <p>8 personally spoke with BH Equities about the</p> <p>9 dispute?</p> <p>10 A. We -- we talk regularly, so it might</p> <p>11 have been, you know, several occasions over the</p> <p>12 course of the last couple of years.</p> <p>13 Q. Was it before or after April 2020</p> <p>14 when HCRE filed the Proof of Claim?</p> <p>15 A. Was it -- was the conversation after</p> <p>16 the Proof of Claim?</p> <p>17 Q. Yep.</p> <p>18 A. Yeah, probably.</p> <p>19 Q. Probably after?</p> <p>20 A. After, yeah.</p> <p>21 Q. Okay. What do you recall about the</p> <p>22 conversation?</p> <p>23 A. I -- I was expressing my</p> <p>24 disappointment in this outcome because of all the</p> <p>25 work, years of effort that went into it and the</p>	<p>Page 221</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 expectation -- my expectations of -- of what</p> <p>3 value we're ultimately going to get is -- is in</p> <p>4 dispute. And so, you know, you work on something</p> <p>5 for four or five years, and, you know, at best is</p> <p>6 half of what you -- you thought over a pretty --</p> <p>7 pretty bad situation.</p> <p>8 Q. Anything else you recall about the</p> <p>9 conversation?</p> <p>10 A. No.</p> <p>11 Q. Did anybody else participate in the</p> <p>12 conversation?</p> <p>13 A. Not -- not with -- no, not with me.</p> <p>14 Q. Did you share any information with</p> <p>15 BH Equities about the dispute? Did you -- did</p> <p>16 you send them any of the pleadings? Did you</p> <p>17 describe for them the nature of the dispute? Or</p> <p>18 did you just talk about your expectations and</p> <p>19 disappointment?</p> <p>20 A. Yeah. I characterize -- I</p> <p>21 characterized it as internal collateral damage or</p> <p>22 unintended consequence number 1000.</p> <p>23 Q. And that internal collateral damage</p> <p>24 and unintended consequences flow directly from</p> <p>25 the bankruptcy filing; is that fair?</p>

<p style="text-align: right;">Page 222</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 A. As it relates to this, that's fair.</p> <p>3 Q. I mean -- I'm sorry, I didn't mean to</p> <p>4 cut you off.</p> <p>5 A. And -- and other things. I mean, our</p> <p>6 -- you know, it's just been tough.</p> <p>7 Q. I mean, look, if Highland didn't file</p> <p>8 for bankruptcy and Mr. Dondero retained control</p> <p>9 of Highland, this wouldn't be an issue; is that</p> <p>10 fair?</p> <p>11 A. I think that's fair.</p> <p>12 Q. Did BH Equities indicate that they</p> <p>13 were aware of the dispute before this</p> <p>14 conversation, or were you actually calling to</p> <p>15 inform them of the dispute?</p> <p>16 A. It -- it was just in a conversation</p> <p>17 -- it was a conversation topic amongst, you know,</p> <p>18 the 30,000 units they -- they manage for us. So</p> <p>19 they -- they from time to time inquire about how</p> <p>20 it's going.</p> <p>21 Q. Did you ever instruct anybody to</p> <p>22 inform BH Equities of the substance of the</p> <p>23 dispute?</p> <p>24 A. Not specifically, I didn't -- I</p> <p>25 didn't specifically tell anyone to discuss it.</p>	<p style="text-align: right;">Page 223</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 Whether or not they did, I don't know.</p> <p>3 Q. Did you ever ask BH Equities -- I'm</p> <p>4 just focusing on BH Equities for the moment. Did</p> <p>5 you ever ask BH Equities if they would consider</p> <p>6 entering into an amendment for the amended and</p> <p>7 restated agreement to adjust the membership</p> <p>8 interests among the members?</p> <p>9 A. Well, they -- they asked us. So it</p> <p>10 naturally came up during the time where they were</p> <p>11 seeking a incentive interests or promote</p> <p>12 interests.</p> <p>13 Q. Right. Forgive me, I forgot that.</p> <p>14 They -- they were initiating conversations in</p> <p>15 order to try to increase their 6 percent; is that</p> <p>16 fair?</p> <p>17 A. Right.</p> <p>18 Q. Okay. But did you ever ask them if</p> <p>19 they would agree to maintain their 6 percent but</p> <p>20 nevertheless enter into an agreement that would</p> <p>21 adjust the percentages as between Highland and</p> <p>22 HCRE?</p> <p>23 A. No.</p> <p>24 Q. Okay.</p> <p>25 A. Never considered it would be that</p>
<p style="text-align: right;">Page 224</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 easy -- that simple.</p> <p>3 Q. Yeah.</p> <p>4 THE WITNESS: Bless you.</p> <p>5 MR. MORRIS: All right. I have</p> <p>6 nothing further, sir. I appreciate your</p> <p>7 patience. I hope -- I hope you have a good</p> <p>8 day otherwise.</p> <p>9 THE WITNESS: Okay. Thank you very</p> <p>10 much.</p> <p>11 THE VIDEOGRAPHER: Okay. Anything</p> <p>12 else?</p> <p>13 MR. MORRIS: Before we go off, let</p> <p>14 me just ask -- I know the U.S. Trustee is</p> <p>15 on here -- does anybody else have any</p> <p>16 questions for this witness?</p> <p>17 Okay. We can go off the record.</p> <p>18 THE VIDEOGRAPHER: Okay. The</p> <p>19 time -- go ahead, sir, finish.</p> <p>20 MR. GAMEROS: I was going to say,</p> <p>21 we're going to reserve read and sign. And</p> <p>22 I'll talk to the court reporter about</p> <p>23 ordering after we get off the record.</p> <p>24 THE VIDEOGRAPHER: Okay. The time</p> <p>25 is 3:07 p.m. and this ends the deposition</p>	<p style="text-align: right;">Page 225</p> <p>1 MATT McGRANER - 10/11/2022</p> <p>2 of Mr. Matt McGraner.</p> <p>3 (Time noted - 3:05 p.m.)</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 MATT McGRANER</p> <p>9</p> <p>10 Subscribed and sworn to before me this _____</p> <p>11 day of _____, 20____.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1	MATT McGRANER - 10/11/2022	1	MATT McGRANER - 10/11/2022
2	C E R T I F I C A T E	2	ERRATA SHEET FOR THE TRANSCRIPT OF:
3	I, Kim A. McCann, RMR, CRR, CSR in and	3	Case Name: In Re: Highland Capital Management, LP
4	for the State of Texas, do hereby certify:	4	Dep. Date: October 11, 2022
5	That MATT McGRANER, the witness whose	5	Deponent: MATT McGRANER
6	deposition is hereinbefore set forth, was duly	6	Pg. Ln. Now Reads Should Read Reason
7	sworn by me and that such deposition is a true	7	_____
8	record of the testimony given by such witness;	8	_____
9	That pursuant to FRCP Rule 30,	9	_____
10	signature of the witness was requested by the	10	_____
11	witness or other party before the conclusion of	11	_____
12	the deposition;	12	_____
13	I further certify that I am not	13	_____
14	related to any of the parties to this action by	14	_____
15	blood or marriage; and that I am in no way	15	_____
16	interested in the outcome of this matter.	16	_____
17	IN WITNESS WHEREOF, I have hereunto	17	_____
18	set my hand this October 12, 2022.	18	
19		19	_____
20		20	Signature of Deponent
21	_____	21	SUBSCRIBED AND SWORN BEFORE ME
22	Kim A. McCann, RMR, CRR, CSR	22	THIS _____ DAY OF _____, 20_____.
23		23	_____
24		24	(Notary Public) MY COMMISSION EXPIRES: _____
25		25	

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